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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 140.

JAMES M. COBURN AND WILLIAM N. EWING,
APPELLANTS,

vs.

THE CEDAR VALLEY LAND AND CATTLE COMPANY (LIMITED) AND GEORGE DIXON FISHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 4, 1887.

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INDEX.

	Original.	Print.
Citation and proof of service of same	*a*	1
Caption	1	1
Transcript from State court	1	1
Petition	1	1
Summons	9	7
Sheriff's return	10	7
Appearance for defendants, &c.	11	7
Petition for removal	11	8
Bond for removal	13	8
Order for removal	14	9
Clerk's certificate	14	9
Order filing answer	15	10
Order granting leave to file cross-bill	15	10
Answer	15	10
Stipulation as to hearing applications for injunction	28	18
Affidavit of Coburn & Ewing	29	18
Opinion	32	20
Affidavit of Duncan Stewart *et al.*	34	21
Order for injunction, &c.	43	27

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 14, 1890.

	Original.	Print.
Petition for decree	44	28
Copies of correspondence	46	29
Affidavit of George D. Fisher	65	39
Exhibit A—Form of agreement	68	40
Affidavit of J. V. C. Karnes	69	41
Order for decree	71	42
Opinion	71	42
Decree	74	44
Application for rehearing	75	44
Stipulation as to hearing application for rehearing	78	46
Notice of application for rehearing	79	47
Opinion on application for rehearing	79	47
Order denying rehearing	82	48
Order allowing appeal	82	49
Petition for appeal	82	49
Order approving bond	83	49
Bond	84	50
Clerk's certificate	85	50

a UNITED STATES OF AMERICA, *sct:*

To the Cedar Valley Land and Cattle Company, Limited, and George Dixon Fisher, Greeting:

You are hereby cited and admonished to be a nd appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to an appeal from the decision of the circuit court of the United States for the western division of the western district of Missouri, in a cause wherein J. M. Coburn and W. N. Ewing are appellants and you are respondent, to show cause, if any there be, why the judgment rendered against the said appellants in said appeal should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arnold Krekel, district judge of the United States for the western division of the western district of Missouri, this 2nd day of December, in the year of our Lord one thousand eight hundred and eighty-six.

A. KREKEL, *Judge.*

Service of the above accepted.

GEO. W. McCRARY,
Solicitor for Appellee.

[Endorsed:] 1069. Citation.

1 UNITED STATES OF AMERICA, *sct:*

Pleas and proceedings had before the circuit court of the United States for the western division of the western district of Missouri in a cause wherein J. M. Coburn and W. N. Ewing are complainants and The Cedar Valley Land and Cattle Company, Limited, is defendant.

In Chancery.

Be it remembered that heretofore, to wit, on Thursday, November 19th, A. D. 1885, in vacation of said court, the following entry appears of record:

J. M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO.

This day there is received and filed herein a transcript of record from Jackson county circuit court, removed by defendant.

Be it remembered that on the 6th day of October, A. D. 1885, there was filed in the office of the clerk of the circuit court of Jackson county, Missouri, a petition wherein W. N. Ewing *et al.* are plaintiffs and The Cedar Valley Land and Cattle Company, Limited, *et al.* are defendants.

Said petition is in words and figures as follows, to wit:

In the Circuit Court of Jackson County, State of Missouri, at Kansas City.

J. M. COBURN and W. N. EWING, Partners Trading and Doing Business under the Firm Name of Coburn & Ewing, and W. N. Ewing, Pl'ffs,

vs.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE DIXON FISHER, Defendants.

2 The plaintiffs, J. M. Coburn and W. N. Ewing, partners trading under the firm name of Coburn and Ewing, and W. N. Ewing complain of the defendants, The Cedar Valley Land and Cattle Company, Limited, and George Dixon Fisher, and for the plaintiffs' cause of action say—

That the plaintiffs, J. M. Coburn and W. N. Ewing, are partners trading and doing business under the firm name of Coburn and Ewing and who join with the said W. N. Ewing for himself as the plaintiffs in this action.

That the defendant, Cedar Valley Land and Cattle Company, Limited, is a foreign corporation created and organized under the laws of Great Britain and doing business and having property within the county of Jackson and State of Missouri and within the State of Texas.

That at the special instance and request of defendant, The Cedar Valley Land and Cattle Company, Limited, the plaintiff, W. N. Ewing, on March 2nd, 1885, proposed in writing to said defendant company, at its office in London, England, to subscribe for and take in the name of and for the plaintiffs Coburn and Ewing two thousand shares of its capital stock of the par value of ten pounds sterling, or $50.00, for each share, and upon the certain and only condition that the said plaintiff, W. N. Ewing, should be appointed manager of said defendant company for the period of five years, and which said proposition in writing is in words and figures as follows:

MORLEY'S HOTEL, TRAFALGAR SQUARE, LONDON, W. C.,
MONDAY, *March* 2, 1885.

MY DEAR SIR: Referring to our conversation this morning upon the subject of my subscription to the capital stock of the Cedar
3 Valley Company and in regard to the remuneration to be paid me as manager of the company in America, I beg to say that I have given these matters the fullest and most serious consideration, and, looking to my own proposition, I regret that I can come to no other conclusion than the following: I will subscribe for two thousand shares, but I can do so only upon the condition that I am to be appointed manager of the company for five years. Appreciating your views as to an economical administration for the first year, I am willing to leave to the honorable board to suggest a salary not less than —, which in their judgment they can afford to pay in view of the work to be done and the earnings to be realized. The remaining four years I shall expect a salary of five thousand dollars per annum, in addition to which, of course, all travelling,

office, and such like expenses would have to be paid by the company.

I am extremely sorry that the misconstruction of my letters should have led to that which is to me such an unpleasant incident. I had not the slightest idea of increasing under any circumstances a liability beyond $80,000.00, and, as the above offer will involve a subscription of $20,000.00 in excess of my original proposition, I hope that you will concur with me that this will be as much as I can fairly be expected to do under the circumstances.

I am, sir, most sincerely yours, W. N. EWING.

To Lieut. Col. D. Stewart, Cedar Land and Cattle Co., London.

That on the date last aforesaid and at the time *of* said proposition in writing was made the board of directors of said defendant company was then in session to consider the same among other business, and the said board having under consideration the same did, at a session afterwards held on March 4th, 1885, duly approve
4 and accept the same for and on behalf of said defendant company on the condition that the said W. N. Ewing would subscribe for and take in the name of and for said plaintiffs, Coburn and Ewing, the said two thousand shares of said stock of the par value aforesaid, and did for and on behalf of said defendant company, on the date last aforesaid, enter into a written agreement and contract with the plaintiff, W. N. Ewing, relating to and concerning his employment as manager of said defendant company, and which said contract is in words and figures following, to wit:

THE CEDAR VALLEY LAND AND CATTLE
COMPANY, LIMITED, MORGATE STREET CHAMBERS,
30 A MORGATE STREET, LONDON, E. C., ——, 18—.

Memo. of agreement as to Mr. Ewing's employment as the company's manager in America, as arranged at the board's meeting on the 4th of March, 1885.

Mr. W. N. Ewing is engaged as the company's manager in America for five years from first of January, 1885, at a salary for the first year of £600, and the salary for subsequent years to be such as may be agreed on by Mr. Ewing and the board, six months' notice to be given by Mr. Ewing if he desires to terminate the engagement; office and traveling expenses not included in salary; office expenses estimated by Mr. Ewing at $25.00 per month.

THOMAS C. WEBB, *Secretary.*

That the said defendants, Coburn and Ewing, at the date last aforesaid, for the purpose of performing the proposition made by the plaintiff, W. N. Ewing, for them, who was duly authorized so to do, subscribed for and took two thousand shares of the capital stock of said defendant company of the par value of ten pounds sterling, or $50.00, for each share so subscribed by them, and thereupon and on the date last aforesaid paid to the said defendant company the sum of $50,000 on said shares of stock, and being in full of all assess-

ments and calls, theretofore and up to the commencement of this action, which have been made on said stock, and on the date
5 last aforesaid received of and from the defendant company its properly authenticated and issued certificates of shares for said stock so subscribed by them.

That immediately thereafter the plaintiff, W. N. Ewing, entered upon the duties of manager of the business concerns and property of the defendant company, and has been continuously since then and now is in the management of the same, consisting now and at all times heretofore of a large ranch and herd of cattle in the State of Texas.

That on or about September 7th, 1885, the defendant company, in writing, did attempt to cancel and terminate the appointment of the plaintiff, W. N. Ewing, as manager of the said defendant company, and which said writing is in words and figures as follows:

THE CEDAR VALLEY LAND AND CATTLE
COMPANY, LIMITED, MORGATE STREET CHAMBERS,
30 A MORGATE STREET, LONDON, E. C., 7 *Sept.*, 1885.

DEAR SIR: I am instructed to inform you that in consequence of the facts which have come to the knowledge of the board connected with your purchase of the Cedar Valley property from Mr. Munson the directors have decided to cancel your appointment as manager, and that your duties will terminate at the date of the delivery of this letter to you. Mr. Fisher is authorized to take charge of all books, papers, and other property belonging to the company at present in your hands, and I am to request that you do hand them over to him accordingly.

Yours truly, THOMAS E. WEBB, *Secretary.*

6 W. N. Ewing, Esq., Mess. Coburn and Ewing, Kansas City, Mo., U. S. A.

The plaintiffs Coburn and Ewing further state that the sole and only inducement, reason, or consideration for the plaintiffs Coburn and Ewing making said subscription of stock aforesaid was the appointment of the plaintiff, W. N. Ewing, as the manager of the said company for the period aforesaid, the said company and all the officers and members being residents of England, unacquainted with the methods or ways of successfully transacting business in the State of Texas, where all the business of said defendant company has at all times been located, and the said plaintiff, W. N. Ewing, being then and at all times since thorough, efficient, economical, and successful in the management and carrying on of the particular business engaged in by the defendant company; and the plaintiffs Coburn and Ewing further aver and charge the fact to be that they would not have subscribed or taken any shares of the said capital stock whatever had it not been for the contract and engagement of the defendant company appointing and employing the plaintiff, W. N. Ewing, as manager of the said company for the period aforesaid; that the defendant, George Dixon Fisher, claiming to be a director of said defendant company and to be acting in its behalf at Kansas

City, in the county of Jackson and State of Missouri, on the 5th day of October delivered to the plaintiff the writing last aforesaid, signed by the secretary of the said company, and did thereupon demand of and from the plaintiff, W. N. Ewing, all the books, papers, and property belonging to the defendant company in the possession of the said plaintiff, W. N. Ewing, as manager thereof.

That plaintiffs further say that plaintiff, W. N. Ewing,
7 during the entire time that he has been acting as manager of the said defendant company, has been faithful and efficient in the discharge of all his duties as such manager, and has so systematically, thoroughly, and economically and successfully managed the business affairs of the said defendant corporation that the defendant company has made larger profits and more money than other companies in a similar business, and has advanced and appreciated the value of its property and its stock at least the sum of twenty-five per centum of each dollar thereof, and has as such manager at no time given said defendant company any just cause, reason, or excuse for terminating his said appointment as such manager.

That the actual value of said stock so subscribed by the said plaintiffs, Coburn and Ewing, is the sum of $50,000.00 so paid by them in cash thereon and a further sum of $25,000, its proper proportion of the accretion of profits and property and aggregating the sum of $75,000.00, and no part of which the defendant company or any one for it tenders to, offers, or will pay back or refund to the said Coburn and Ewing, but to pay which or any part thereof on any terms whatever to the said plaintiffs, Coburn and Ewing, it has refused and still refuses.

That the contract entered into and made between the plaintiff, W. N. Ewing, and the defendant company for his services as manager of the said company was, is, and will be of great value and profit to the plaintiff, W. N. Ewing, in the sum of $5,000 for each year thereof and aggregating the sum of $20,500.00 for the remaining portion of said period of five years.

That plaintiff further says that plaintiff, W. N. Ewing, as such manager, has from time to time become and now is personally liable to the Merchants' National Bank of Kansas City, Missouri, for advances made by said bank to the defendant company in the
8 sum of about twenty-one hundred dollars, and which the defendant company refuses to discharge or to provide for its payment or to in any manner release the plaintiff, W. N. Ewing, from his personal liability therefor.

The plaintiffs further say and charge the fact to be that the defendants and each of them, their attorneys, agents, employés, confederates, and assistants, threaten to and will, unless speedily enjoined by the order and injunction of this honorable court, annoy and harass the plaintiff, W. N. Ewing, in the performance of his duties as manager of the defendant company, and by force and by actions at law dispossess and turn him out of the position of such manager, and to seize upon and take from his possession all its property, wherever situate, and all control and management of the same

without paying, offering to pay, or refund the value of said stock as aforesaid to the plaintiffs Coburn and Ewing, or any part thereof, or paying or offering to pay the reasonable damages accruing to the plaintiff, W. N. Ewing, by reason of the failure and refusal of defendant company to further perform its contract with said plaintiff, W. N. Ewing, as manager of said company, and without releasing and indemnifying the said plaintiff, W. N. Ewing, for his liability to said bank. The plaintiffs further state and charge the fact to be that the said plaintiff is of right entitled to continue in the peaceable, quiet, and orderly possession and control of the property and business of the defendant company until such time as the defendant company shall pay to said plaintiffs, Coburn and Ewing, the value of their said stock aforesaid, and shall pay to the plaintiff, W. N. Ewing, his reasonable damages for the failure and refusal of the defendant company to further perform its said contract with him as such manager, and until it shall release or indemnify him in his liability to said bank for advances to said defendant com-
9 pany, and upon performance of all which by said defendant company the said W. N. Ewing will immediately thereupon surrender to said defendant company all its books, papers, and property in his possession as such manager; and the plaintiffs further aver and charge the fact to be that if the said defendants or either of them or any of their attorneys, agents, or employés, confederates, or assistants are permitted to dispossess the plaintiff, W. N. Ewing, as such manager, it will be to the great and irreparable injury of the plaintiffs and each and all of them and in violation and disregard of the contract and agreement hereinbefore mentioned made by them with the defendant company.

Wherefore the plaintiffs pray that the defendants, The Cedar Land and Cattle Company, Limited, and George Dixon Fisher, and each of them, their attorneys, agents, employés, confederates, and assistants, each and all, may be temporarily enjoined from in any way or in any manner interfering with or dispossessing the plaintiff, W. N. Ewing, as manager of the defendant company, or with his possession of its property or with his control or management of its business affairs, and that they, each and all of them, may be temporarily enjoined from using force or commencing an action at law or in equity or in any court for that purpose; that the defendants may be summoned to answer this petition; that upon a final hearing the defendants may be perpetually enjoined as aforesaid; that the plaintiffs may have such other and further relief as may be proper, and for costs of this action.

KARNES AND ESS AND
WATERS AND CHASE,
Attorneys for Plaintiffs.

The writ attached to said petition is in words and figures as follows, to wit:

Circuit Court Summons.

10 The State of Missouri to the sheriff of Jackson county, Greeting:

You are hereby commanded to summon the Cedar Valley Land and Cattle Company, Limited, and George Dixon Fisher, if they be found in your county, that they be and appear before the honorable judge of our circuit court of Jackson county, at the court-house, in the city of Kansas, on the second Monday in January next, it being the 11th day of said month, then and there to answer unto the complaint of J. M. Coburn and W. N. Ewing, as Coburn and Ewing, and W. N. Ewing, as set forth in the foregoing petition, and that you then and there have this writ, and that you certify how you execute the same.

Witness L. F. McCoy, clerk of the said circuit court, [SEAL.] with the seal thereof hereunto affixed, at office, in Kansas City, this 6th day of October, A. D. 1885.

L. F. McCOY, *Clerk*,
By D. M. McCLANAHAN, *D. C.*

The sheriff's return on the back of said writ is in words and figures as follows, to wit:

Executed this writ this 6th day of October, A. D. 1885, in Jackson county, Missouri, by delivering a copy of this writ, together with a copy of the petition hereto attached, to George Dixon Fisher, director of the within-named defendant corporation, The Cedar Valley Land and Cattle Company, Limited; and, further, on the same day, by delivering a copy of this writ to the within-named defendant, George Dixon Fisher.

W. T. HICKMAN, *Sheriff*,
By WILL SITLINGTON, *Deputy*.

Fee, 2 def'ts, $2.00.

11 On the 16th day of the regular October term, 1885, of the circuit court of Jackson county, Missouri, the same being the 30th day of October, A. D. 1885, the following proceedings were made of record in this cause, to wit:

J. M. COBURN and W. N. EWING, Partners as Coburn and Ewing, and W. N. EWING
vs.
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE DIXON FISHER. } 6555.

Now, at this day, comes said defendants, by George W. McCrary, Esq., and Messrs. Adams and Field, their attorneys, and enter their appearance in the above-entitled cause and file their petition, duly verified, and bond for the removal of this cause into the circuit court of the United States in and for the western division of the western district of Missouri.

Said petition for removal is in words and figures as follows, to wit:

In the Circuit Court of Jackson County, Missouri, at Kansas City. October Term, 1885.

J. M. COBURN and W. N. EWING, Plaintiffs,
vs.
THE CEDAR VALLEY LAND AND CATTLE COMPANY and GEO. D. FISHER, Defendants.

Petition for Removal to United States Circuit Court at Kansas City.

To the circuit court of Jackson county, Missouri, at Kansas City:

Your petitioners, the defendants in the above-entitled cause,
12 respectfully show to this honorable court that the matters and amount in dispute in the above-entitled suit exceed, exclusive of costs, the sum or value of five hundred dollars; that the plaintiffs, Coburn and Ewing, are both citizens of the State of Missouri and have been since and before the institution of this suit.

That your petitioners are and have been since before the institution of this suit both aliens—that is to say, your petitioner, the Cedar Valley Land and Cattle Company, Limited, is a corporation created and organized under the laws of the United Kingdom of Great Britain and Ireland; that your petitioner, Geo. D. Fisher, resides in London, England, and is a subject of the Queen of the United Kingdom of Great Britain and Ireland. Your petitioners herewith offer to this court a bond, with good and sufficient sureties, for their entering in the circuit court of the United States in and for the western division of the western district of Missouri, on the first day of its next session, copies of process in said suit against them and of all pleadings and other proceedings in said cause.

Wherefore your petitioners prays that this cause be removed for trial into the circuit court of the United States in and for the western division of the western district of Missouri, and that the Jackson county circuit court proceed no further in said suit save to order the same removed for trial, as herein prayed for.

GEO. W. MCCRARY AND
ADAMS AND FIELDS,
For Petitioners.

George D. Fisher, being duly sworn, on his oath says that he has read the foregoing petition and knows the contents thereof; that the statements and allegations therein contained are true.

GEO. D. FISHER.

13 Subscribed and sworn to before me this 30th day of October, 1885.

AMOS H. KAGY,
[SEAL.] *Notary Public.*

The bond for removal is in words and figures as follows, to wit:

Know all men by these presents that I, Geo. D. Fisher, as princi-

pal, and James A. Forbes, as surety, are held and firmly bound unto J. M. Coburn and W. N. Ewing in the penal sum of two hundred and fifty dollars, the payment whereof, well and truly to be made, we bind ourselves, our heirs and representatives, jointly and severally, firmly by these presents, upon the following conditions:

Whereas the Cedar Valley Land and Cattle Company, Limited, and Geo. D. Fisher have petitioned the circuit court of Jackson county, at Kansas City, Missouri, for the removal of a certain cause therein pending, wherein the said Coburn and Ewing are plaintiffs and said petitioners are defendants, to the circuit court of the United States in and for the western division of the western district of the State of Missouri:

Now, if the said petitioners shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the process against them and of all pleadings and other proceedings in said suit, a copy of the record, and pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and also appeal and enter special bail in said suit if special bail was originally requisite therein, then this obligation to be void; otherwise in full force and effect.

Witness our hands and seals this 30th day of October, 1885.

GEO. D. FISHER. [SEAL.]
J. A. FORBES. [SEAL.]

14 During said October term of said court, the same being the 31st day of October, A. D. 1885, the following proceedings were made of record in this cause, to wit:

J. M. COBURN and W. N. EWING, Partners as Coburn and Ewing, and W. N. EWING
vs.
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEO. D. FISHER. } 6555.

Now, at this day, come the defendants aforesaid, by their attorneys, and defendants having filed their petition and bond for removal of this cause into the circuit court of the United States in and for the western division of the western district of the State of Missouri, upon consideration the court grants the prayer of said petition, approves said bond, and accepts the surety thereon, and orders that this cause be removed into the circuit court of the United States in and for the western division of the western district of the State of Missouri.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

I, L. F. McCoy, clerk of the circuit court of Jackson county, Missouri, do hereby certify that the foregoing is a full, true, and complete copy of all the proceedings had in the cause wherein J. M. Coburn *et al.* are plaintiffs and The Cedar Valley Land and Cat-

tle Company, Limited, *et al.* are defendants as the same appears of record and on file in my office.

In witness whereof I have hereunto subscribed my name
[SEAL.] and affixed the seal of said court at office, in Kansas City, this 31st day of October, A. D. 1885.

L. F. McCOY, *Clerk*,
By D. M. McCLANAHAN, *D. C.*

15 And on Monday, November 23rd, A. D. 1885, and in vacation of said court, the following entry appears of record, to wit:

J. M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO.

This day comes defendant, by its solicitors, and files answer herein.

The following order was this day filed in this cause, to wit:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

J. M. COBURN and W. N. EWING, Partners, Doing Business as Coburn and Ewing, and W. N. EWING
vs.
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE DIXON FISHER.

It is ordered that the above-named respondents, The Cedar Valley Land and Cattle Company, Limited, have leave to file a cross-bill herein.

Said answer is in words and figures as follows:

In the Circuit Court of the United States, Western Division, Western District of Missouri.

J. M. COBURN & W. N. EWING, Partners, Doing Business as Coburn and Ewing, and W. N. EWING, Complainants,
vs.
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE DIXON FISHER, Respondents.

16 *The Joint and Several Answer of the Above-Named Respondents to the Bill of Complaint.*

These respondents respectively, now and at all times hereafter saving to themselves all manner of benefit and advantage or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as these respondents are advised it is material or necessary for them to make answer thereto, severally answering, say—

The respondent company is a corporation organized under the laws of Great Britain and Ireland.

These respondents deny that, at the special instance and request of the respondent, The Cedar Valley Land and Cattle Company, Limited, the plaintiff, W. N. Ewing, made to said company, at its office, in London, England, the proposition in writing set out in said bill and dated Monday, March 2nd, 1885, and respondents say whatever proposition was made by said complainant, Ewing, to said company upon the subject of his employment as manager or with respect to any subscription to the stock of said company was made by the said Ewing on his own motion, and not at the special instance and request of said company.

Further answering, these respondents say that true it is the said complainant, Ewing, addressed to the said company, at or about March 2nd, 1885, a communication in writing substantially in the form set forth in said bill, but whether the communication set forth in said bill is a true copy thereof respondents cannot answer.

And the respondents say that the said proposition, having been duly considered by the board of directors of said respondent company, was rejected, and said company refused to enter into
17 any contract or agreement whereby stock should be issued to said complainants, Coburn and Ewing, upon the condition that said complainant, W. N. Ewing, should be appointed manager of said company for the period of five years or any other period.

And respondents further say that, after being advised of the rejection of his said proposition to subscribe for stock in said company upon the condition aforesaid, on the 4th day of March, 1885, *that* said complainant, W. N. Ewing, for Coburn and Ewing, made an application in writing to said company requesting it to allot to said Coburn and Ewing two thousand shares of its stock, which application was unconditional, except that the allotment was to be made upon the terms of the company's prospectus.

Said application was as follows:

"To the directors of the Cedar Valley Land and Cattle Company, Limited, Morgate street chambers, Morgate street, London, E. C.

GENTLEMEN: I request you to allot me two thousand shares upon the terms of the company's prospectus, and I hereby agree to accept the same or any smaller number that may be allotted to me, and to pay ten thousand pounds on the first day of May, 1885, as the board desires, and I authorize you to register me as the holder of the said shares.

Names in full: WILLIAM NATHANIEL EWING AND JAMES M. COBURN.

Address: Kansas City, Missouri, U. S. A.
Description: Bankers and merchants.
Date: 4th March, 1885.
Signature: Coburn & Ewing."

18 Respondents, further answering, say that it is true, as alleged, that at the time when the proposition first above men-

tioned and set out in the bill was made the board of directors of said respondent company was then in session, and that they considered said proposition, among other business; but it is not true that said board of directors did, at a session held March 4th, 1885, duly approve and accept the same for and on behalf of respondent company on the condition that the said W. N. Ewing would subscribe for and take in the name and for complainants Coburn and Ewing the said two thousand shares of said stock; but, on the contrary, the said board did, upon consideration of the said proposition, disapprove and reject the same.

Further answering, respondents say that true it is that the respondent company entered into an agreement to employ the complainant, W. N. Ewing, as its manager, a copy of which agreement is set forth in the bill; but it is not true that such employment was in consideration of a subscription to the stock of said company by said Ewing for Coburn and Ewing, and respondents aver that said company distinctly refused to consider the two matters together, and the application for stock was a transaction entirely separate and apart from the employment of said Ewing as such manager.

Further answering, these respondents state that the said complainant, Ewing, entered on duty as manager of this respondent company, and it is also true that on or about September 7th, 1885, the respondent company did cancel and terminate said respondent Ewing's appointment as its manager, and did execute and afterwards, about October 5th, 1885, did serve upon him the notice of removal set forth in said bill.

And these respondents, further answering, say that the said complainant, W. N. Ewing, was removed from the position of manager as aforesaid, and his appointment was cancelled for the following good and sufficient reasons, to wit:

19

The said complainant, Ewing, obtained his employment as manager as aforesaid by fraud, in this: that at the time he procured the same he suppressed and secreted certain facts then known to him and wholly unknown to the respondent company and which he was in duty bound to divulge and which, if divulged, would have prevented his employment in that or any other capacity by the said company; all which facts, as well as the acts of concealment and fraud aforesaid, are hereinafter fully set forth and stated.

Respondents further state that heretofore, to wit, on or about the 22nd day of December, 1884, the promoters of respondent company, being then engaged in forming a corporation under the laws of Great Britain and Ireland for the purpose of engaging in the cattle business in the State of Texas and being then desirous of purchasing for the use of the company, when formed, a certain ranch and a certain large herd of cattle in said State, then the property of one W. B. Munson, did employ the complainants Coburn and Ewing to act for them as their servants and agents in making said purchase; and the said promoters, acting for and on behalf of the company, then in contemplation and about to be formed, to wit, the Cedar Valley Land and Cattle Company, Limited, did, on or about the date last named, by cablegram from London to said Coburn and

Ewing, instruct them to purchase said ranch on the lowest possible terms, not exceeding the sum which had been mentioned in a previous letter from said Coburn and Ewing, dated October 22nd, 1884.

And respondents aver that the said complainants, J. M. Coburn and W. N. Ewing, partners as Coburn and Ewing, accepted said employment and agency, and thereby undertook and agreed to buy the said ranch at the lowest possible price and faithfully to represent the interests of said promoters and of said company
20 when formed, and were thereby bound in good conscience and in equity to be faithful in their trust and have no secret interest adverse to the interests of said promoters and of said company when formed.

Respondents further aver that afterwards, on or about the 29th day of December, 1884, the said Coburn and Ewing, in the meantime having accepted and entered upon the duties of the agency aforesaid, did notify the promoters of the respondent company by cablegram that they had closed the contract for the purchase of said ranch, setting forth in said cablegram the terms of the contract.

Said cablegram is in words and figures as follows:

"Contract closed price for cattle eighteen dollars fifty cts. except bulls everything actually counted commencing May concluding August first horses and mules fifty dollars seventy-five thousand acres at two dollars all other property thereon in payments one hundred thousand cash one hundred fifty thousand May first when land must be deeded balance as cattle are counted allowing five per centum for remnant no forfeiture no interest if desired one hundred thousand will be carried one year six per centum all expenses building chutes and rounding cattle therein paid by him every point well guarded most favorable contract must have one hundred thousand in New York Monday Tuesday last day contract holds good answer here."

And the said promoters of the respondent company, relying upon the good faith of said Coburn and Ewing and believing that said cablegram truthfully stated the price to be paid to said Munson, did approve said sale, and, at the request of said Coburn and Ewing, did forward to them money to make the required payments of the purchase-money of said ranch and cattle as follows:

On or about the 31st day of December, 1884, the said promoters, at the request of said Coburn and Ewing, sent them the sum of $99,791.80, in trust, to be by them applied in payment of said purchase-money.

21 And on or about the fifth day of May, 1885, after the respondent company had been fully organized as a corporation and after the aforesaid contract for the employment of said complainant Ewing as manager had been entered into, the respondent company sent to said Coburn & Ewing the further sum of $139,912.50 to be applied by them as a further payment upon said purchase.

And on or about the 18th day of June, 1885, respondent company, in order to comply further with the contract for the purchase

of said property, sent to Coburn & Ewing the further sum of $179,935.

All of which sums of money were duly received by the said Coburn and Ewing in trust for the purchase aforesaid.

The respondents further represent that after the receipt by said Coburn & Ewing of the first instalment above mentioned they falsely represented to the respondent company that they had paid the whole of said sums to said Munson on account of the purchase-money of said property, said false representation having been made by cablegram, dated 4th January, 1885, as follows:

"Contract signed and money paid."

Complainants Coburn and Ewing did not in good faith pay over all of said first instalment of money to said Munson; but, on the contrary, in pursuance of a secret agreement and understanding between them, and which was by complainants studiously concealed from the respondent company, they, the said Coburn and Ewing, did receive and appropriate to their own use out of said first instalment a large sum, to wit, about the sum of ten thousand dollars; but whether this sum was taken out of the money sent by the promoters of the respondent company to make said first payment before said money was placed in the hands of said Munson or whether the whole sum was handed to said Munson and the
22 sum of about ten thousand dollars immediately returned to said Coburn and Ewing these respondents do not know and cannot certainly state, but they aver and charge that whatever the form of the transaction it was resorted to to cover up the illegal and fraudulent and secret scheme whereby the said Coburn and Ewing were to pay to said Munson about ten thousand dollars less than the sum placed in their hands by the respondent company with which to make said first payment, which illegal and fraudulent purpose was fully accomplished; and these respondents charge that the complainants Coburn and Ewing had no right to secretly bargain with Munson to secure from him, as commission or otherwise, directly or indirectly, any part of the moneys sent to them by the respondent company as aforesaid.

And these respondents aver and charge that at or before the time of consummating the purchase of said ranch and cattle for the respondent company the said complainants, Coburn and Ewing, secretly, fraudulently, and in violation of their trust did agree with said Munson to take from the moneys to be paid by the respondent company for said property the sum of about forty thousand dollars, and in pursuance of said fraudulent agreement the said Coburn and Ewing did appropriate in the manner aforesaid out of said first instalment the said sum of about ten thousand dollars without the knowledge or consent of the respondent company.

And respondents further state that the said complainants, Coburn and Ewing, after their employment as aforesaid as agents to purchase the ranch and property, did agree with the said Munson to allow and pay him at the rate of sixty dollars per head for a large number of bulls included in said herd of cattle, whereas the said Munson was then willing to accept for said bulls eighteen dollars

and fifty cents per head, and the large price was secretly and
23 fraudulently agreed upon to induce the said Munson to consent to the payment of the aforesaid large sum of forty thousand dollars as commissions to the said Coburn and Ewing out of the moneys so sent to them by the respondent company, whereby the respondent company was damaged in the sum of about eighteen thousand nine hundred and twenty-four dollars.

And respondents say that when the complainant, W. N. Ewing, applied for employment as manager as aforesaid he concealed the fact that he had been and was then acting in bad faith toward the respondent company, as well as the fact that he and his partner, Coburn, had appropriated to their own use a large part of the money sent them as aforesaid in trust to be used as aforesaid, and also concealed the fact that he and his said partner had secretly agreed with said Munson to retain from payments thereafter to be made the further sum of about $30,000, making in all the sum of about $40,000, and that they had fraudulently allowed and paid to said Munson for said bulls more than said Munson was willing to take for them as aforesaid, well knowing that the respondent company, if advised of this bad faith, breaches of trust, and fraud, would refuse to employ him as such manager.

And respondents charge that in all these fraudulent transactions the said complainant Ewing was the active member of the firm of Coburn and Ewing, having the chief charge and management of the negotiations and dealings with the respondent company, so that had the respondent company been advised of the fraudulent transactions of said firm of Coburn and Ewing it would have at once refused to employ said Ewing as its agent in any position of trust and conscience whatsoever.

Wherefore these respondents say that the said contract whereby the said complainant, Ewing, was employed as manager was
24 obtained by fraud and is wholly null and void and should not be enforced by a court of conscience and equity, and the removal of said complainant Ewing from the position of manager as aforesaid was for good and sufficient cause.

And respondents further say that the complainant, W. N. Ewing, after his appointment as manager of the respondent company as aforesaid, continued to act in bad faith toward the respondent company and in hostility to its interests.

For respondents aver that after such appointment the respondent company sent to said complainants, Coburn & Ewing, the other instalments of money above mentioned in trust to be paid to said Munson upon the contract for the aforesaid property, and the said complainants, Coburn and Ewing, in pursuance of the secret agreement aforesaid, retained and appropriated to their own use out of the same the sum of about thirty thousand dollars, to the great damage and injury of the respondent company, in the consummation of which fraud the said complainant, Ewing, took an active part.

And respondents further state that the complainants, Coburn & Ewing, appropriated out of the money sent them by the respondent company to be paid said Munson for said property another large

sum, to wit, the sum of $60,000, and by an agreement with said Munson unknown to the respondent company and kept secret from it turned over to said Munson in lieu of said sum certain real estate in Kansas City, Missouri, being the south 30 feet of the east 90 feet of lot 179, block 18, Old Town of Kansas City, Jackson county Missouri, by which the said complainants, Coburn & Ewing, made a profit of about the sum of $15,000, which they appropriated to their own use and kept secret from the respondent company; all which fraudulent acts on the part of the said complainants were unknown to the respondents until the month of August last.

25 These respondents, further answering, say that the respondent company is owner of the ranch and cattle purchased from said Munson as aforesaid; that among said cattle are about two thousand beeves ready for market and which for the best interests of said respondent company should be sent to market without delay, and said respondent desires to send them to market in charge of an agent selected by it for that purpose, and said respondent company was proceeding to send said cattle to market, as was its right, when on or about the 20th day of October, 1885, the complainant Ewing, claiming still to be the manager of the respondent company, but acting in hostility to its interests and contrary to its wishes, did undertake to interfere with and prevent the respondent company from carrying out its purpose to send said cattle to market, and to this end did order and direct the persons in charge of said cattle to stop them at a point about one hundred and fifty miles from said ranch, and after detaining them there for some time did order them back to the ranch, whereby said complainant, Ewing, under the pretense of acting for the respondent company, and as its agent and servant, has undertaken to defeat its plans and purposes.

Respondents say that said beef cattle were stopped at a point on the plains, contrary to its wishes and contrary to its interests, where they were in danger of straying away and being lost and where they were subject to deterioration and damage by lack of care and attention and for lack of proper food and to damage and injury on account of storms and bad weather, and to what extent the respondent company may have been damaged and injured in consequence of the unauthorized and hostile action of said Ewing these respondents are unable at present to say and will pray leave to amend this answer when these facts are ascertained.

Wherefore these respondents say that the complainant
26 Ewing obtained his employment as manager by concealment and fraud, and he exercised his power as such in hostility to the interests of the respondent company, and he is therefore not entitled to the relief sought nor to any relief whatever.

Respondents deny that the sole and only consideration for the complainants Coburn and Ewing making the subscription to the stock aforesaid was the agreement to appoint complainant Ewing as manager as aforesaid, and say the said appointment was no part of the consideration for the issue of said stock.

Respondents admit that the complainant Ewing has been removed from the position of manager of the respondent company,

and that the respondent, George Dixon Fisher, is authorized to take charge of all the business of the respondent company and to demand and receive from said Ewing all its books and papers now in *its* hands.

Respondents deny that the complainant Ewing during all the time he has been manager of respondent company has been faithful and efficient in the discharge of all his duties as such; deny that the stock subscribed for by complainants is worth $75,000, and aver that the value thereof will not be impaired, but will be enhanced, by the removal of said Ewing from the management; deny that the contract by which the complainant Ewing was employed as manager is or will be of the value of $5,000 per annum for five years, or that it is of any value, and aver that inasmuch as said contract has been cancelled and said complainant Ewing removed from the position as manager aforesaid on account of fraud, concealment, and moral misconduct, as hereinbefore set forth, the said complainant Ewing is not entitled to any damages whatsoever, but aver also that if the said complainant Ewing were entitled to damages there is no impediment in the way of his recover-
27 ing the same by suit at law.

Respondents deny that complainant Ewing is liable for advances made by the Merchants' National Bank to respondent company in the sum of $2,100 or any other sum.

Deny that said complainants are entitled to an injunction as prayed or any other relief.

Deny that the complainant Ewing is entitled to continue in possession and control of the property of the respondent company, and say that said company is entitled to control its own property and appoint for the manager thereof agents in whom it has confidence.

Deny that complainants will suffer irreparable injury from the cancellation of the said contract for the employment of complainant, W. N. Ewing, as manager as aforesaid.

And these respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged.

All which matters and things these respondents are ready to aver and prove as this court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

GEO. W. McCRARY,
ADAMS AND FIELD,
Solicitors for Respondents.

UNITED STATES OF AMERICA,
Western District of Missouri, Western Division.

George Dixon Fisher, being first duly sworn, on his oath deposes and says that he is one of the respondents in this suit, and that he is also the duly authorized agent and attorney-in-fact of the
28 Cedar Valley Land and Cattle Company, Limited, the respondent herein, and that the matters and things set forth in the foregoing answer are true, as he verily believes.

GEORGE DIXON FISHER.

Subscribed and sworn to before me this 21st day of November, A. D. 1885.

HENRY STUBENRAUCH,
Commissioner for the U. S. Circuit Court for the Western District of Missouri.

On the 7th day of December, A. D. 1885, the following stipulation was filed:

In the Circuit Court of the United States for the Western Division of the Western District of the State of Missouri.

COBURN and EWING
vs.
CEDAR VALLEY LAND AND CATTLE CO., Limited, and GEO. D. FISHER.

It is hereby agreed by and between the parties in the above cause that an application for a preliminary injunction by Coburn and Ewing in their petition in the above cause and the application for a preliminary injunction by the Cedar Valley Land & Cattle Company, Limited, and Geo. D. Fisher, in their cross-bill filed in above cause, numbered 1070, both be taken up and considered together on Wednesday afternoon, Dec. 9, 1885. This stipulation shall be deemed and taken as applying to *cause* causes numbered 1069–1070.

This Dec. 7th, 1885.

ADAMS & FIELD,
For Cattle Co. and Fisher.
WATERS, *For C. & E.*

On the 16th day of December, A. D. 1885, the following
29 affidavits of Coburn & Ewing were filed:

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

COBURN & EWING and W. N. EWING, Plaintiffs,
versus
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, Defendants.
} Affidavits.

UNITED STATES OF AMERICA,
Western District of Missouri, State of Missouri, County of Jackson, } ss:

J. M. Coburn and W. N. Ewing, each for himself and not for the other, respectively depose and swear that they have each heard read the petition filed in above cause, and that said petition and the facts therein stated are true; that these affiants, as plaintiffs, have for a long period of time and for a long time prior to the year 1884 been associated together as partners under the firm name of Coburn and Ewing, whose principal business and occupation have been the purchase and sale on commission of real estate, cattle ranches, and

other properties; that on and prior to July, 1884, these affiants as such firm had upon their books and in their hands a certain cattle ranch situated in Texas, known as Munson's cattle ranch, and being the same ranch mentioned in the petition, for the purpose of selling it to whoever might buy, and for a commission to be paid by Munson, the owner of said ranch, upon these plaintiffs effecting a sale thereof, and that said ranch continued so upon their books
30 and in their hands until the consummation of the sale as stated in the petition herein; that one George Burnett, a citizen of Great Britain, having ascertained that said firm of Coburn and Ewing had said ranch for sale and on the terms aforesaid, on or about the month of May, 1884, proposed to said Coburn & Ewing that if they would give him a share of their commission they would find a purchaser for said cattle ranch; that Coburn and Ewing agreed to the same; that thereupon the said George Burnett, in the Kingdom of Great Britain, at once proceeded to find a purchaser, and, these affiants having been informed by the said George Burnett that a sale of said ranch had been made, they from time to time obeyed the directions of said George Burnett as to the execution of all the contracts and instruments of writing connected therewith; that these affiants as said firm had nothing whatever to do or connection, association, or privity with any other person or corporation; that the said George Burnett at all times knew and as thoroughly as these affiants knew that the commission was to be paid by said Munson, the owner of the ranch; that there was not a step taken nor a thing done of which the said George Burnett had not only actual and full notice and knowledge, but the same was done by his express authority and direction, and these affiants further state that the actual and intrinsic value of the services performed were no more than was paid by the said Munson; that the time consumed and efforts made by these affiants were great and valuable, and that—from the time *of* the negotiations were first commenced in the fall of 1884 up to the present hour, or at any time whatever, has the Cedar Valley Land and Cattle Company, Limited, or any of its promoters, or any one else for it or them, ever asked what the plaintiffs would charge, offered to pay them for their services, or to in any
31 manner recompense them for their reasonable commissions in making such sale; that these affiants further state that the said George Burnett, as they have since learned to be true, was one of the original promoters and incorporators of the Cedar Valley Land and Cattle Company, Limited, and, continued his connection as such until it became incorporated, and then becoming an original director and stockholder therein, and that as such promoter, director, and stockholder he had notice and actual knowledge of all the facts hereinbefore stated; that these affiants never were promoters or incorporators of said Cedar Valley Land and Cattle Company, Limited, nor were they in any way connected with said company until they became stockholders on March 4th, 1885; that the said company being desirous to have these affiants subscribe to the capital stock of said company, these affiants, on March 2nd, 1885, through affiant W. N. Ewing, addressed said company a letter, being the same one

set up in the petition, in and by which these affiants offered and agreed to become stockholders on the one only and sole condition that the affiant W. N. Ewing should be made the manager of the company's affairs for the period of five years, and that said company accepted said proposition and appointed this affiant, W. N. Ewing, the manager thereof, and these affiants thereupon made their subscriptions on the ordinary blanks of the company for one hundred thousand dollars of its capital stock, and paid thereon the sum of about fifty thousand dollars in cash; that the said Ewing thereupon entered upon his duties as such manager, and is now in the possession and management of said ranch in the State of Texas. These affiants further state that the said Ewing has in all things performed his duty as such manager and has given said company no reasonable cause or excuse for discharging him as such manager, and has never at any time offered to refund or pay back to these
32 affiants or either of them the money or any part of it paid by them on said stock, or offered to pay the said Ewing or these affiants any sum whatever *any sum whatever* on said contract with said Ewing as manager, but have attempted to sequestrate the entire stock held by these affiants and have refused to permit its transfer on the books of the company. These affiants hereby refer to and make a part of this affidavit their answer sworn to the cross-bill filed herein, and again say that said answer is ture.

And further these affiants say not.

W. N. EWING.
JAMES M. COBURN.

Subscribed and sworn to before me this 16th day of December, 1885. My commission will expire August 22nd, 1888.

HENRY M. STONESTREET,
[SEAL.] *Notary Public, Jackson Co., Mo.*

On the 9th day of January, 1886, the following opinion was filed, to wit:

COBURN & EWING
vs.
CEDAR V. L. & C. Co.

I did not suppose I should have to decide even this preliminary matter. I thought delay was sought really for purpose of settlement.

As it is, I have but few words to say. It is elemental, familiar, and just that a broker negotiating a sale cannot without the knowledge of his principal be agent for one party to buy and take commissions from the vendor. The letters of Coburn & Ewing, ignoring all other evidence, show that they were agents of the company to buy, and they admit that they took commissions from the
33 vendor. When the Co., the principal, ascertained this fact it had a right to remove such an agent from the post of manager. The aff'ts last filed, instead of helping Coburn & Ewing, only make clearer the wrong. Burnett's letters in places I have marked show

that C. & E. were notified of ignorance of promoters & also the consideration as represented to them of Mr. E.'s services.

I make no further comment at this preliminary hearing. No adjustment can be made between the parties.

Let injunction go as prayed for in cross-bill upon giving bond in sum of $75,000 to pay all damages and costs. Clerk will approve sureties.

DAVID J. BREWER,
Circuit Judge.

34 On the 31st day of December, A. D. 1885, the following affidavit was filed, to wit:

In the Circuit Court of Jackson County, in the State of Missouri, at Kansas City.

J. M. COBURN and W. N. EWING, Partners Trading and Doing Business under the Firm Name of Coburn & Ewing, and W. N. Ewing, Plaintiffs,

against

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE DIXON FISHER, Defendants.

We, Duncan Stewart, George Granville Campbell, James Graham, Thomas Arthur Fitzhardinge Kingscote, Charles Stewart, and Thomas Edwin Webb, severally make oath and say:

1. We, the said Duncan Stewart, George Granville Campbell, James Graham, and Thomas Arthur Fitzhardinge Kingscote, are directors of the above company and have been since its formation in December, 1884, in connection with George Burnett, who died in March, 1885, and the said George Dixon Fisher, who is now in America.

2. The plaintiffs acted as agents for the company in the purchase of the property referred to, and as an inducement to the defendants and others to purchase the property they undertook, voluntarily and without any pressure or request from us or any of us, to subscribe 80,000 dollars towards the capital of the company. The letter, of which the following is a copy, from the defendant, W. N. Ewing, to Mr. George Burnett states their obligation in this respect:

OCT. 22, 1884.

Geo. Burnett, Esq., Dundee, Scotland.

35 MY DEAR SIR: Your cable saying, "If Ewing takes thirty thousand more and Munson will take two hundred thousand in stock and debentures, &c.," duly received, & we replied we were unable to place more than eighty thousand dollars with Munson or otherwise; and this morning I am in receipt of your cable 22 saying Cresswell had taken $625,000 in stock and debentures, and unless Munson and myself responded likewise there was no hope, &c. This was received during the absence of my partner, who has been called to Dodge City to attend shipment of some 1,200 Hansford beeves, and as he has been doing the most of the correspondence I

am at a loss to know how to write; however, I know the facts and will endeavor to give them to you.

In the first place, if Mr. Munson has to take anything else save money he would want a sufficient amount over and above the actual price to cover all chances of loss in sale of the stock & debentures so rec'd, and had he been shrewd enough to have asked such an exorbitant price as Creswell is getting he would, I presume, be glad to take the surplus in stock and debentures. There is a larger difference between actually counting out cattle at $22.00 per head than counting them partially at $27.50 to $30.00, and land at $2.50 per acre and land at $2.00 per acre.

Mr. Munson has sold his beeves in the markets here, and for which he received for a portion of them about $32.00, and he sold about time the market was the lowest. This leaves him with about 20,000 head cattle and 75,000 acres of land in fee—that is to say, I found out he only owned 75,000 acres in fee, and in order to make up the 100,000 originally offered he was intending or rather had an option in 25,000 acres for a less figure, say $1.50. This being the case, it would require to buy him with the money as follows, or rather this is my judgment:

36	20,000 head cattle, all classes & ages, @ 20.00	$400,000
	75,000 acres land & improvements	150,000
	Am't'g to	$550,000

For this sum cash in hand or payable $100,000 every thirty days would, in my opinion, buy his cattle and land, and if we were placed in this position with the cash we have good reason to believe we could make him throw in his leases, business, horses, equipments, &c., and would include $25,000 for the promoters to float company. Now, if we take $80,000 from that it would only leave for your syndicate to raise additional in actual money $445,000 to settle with Munson, $25,000 going to the promoters, for which it seems reasonable they would be willing to accept stock & debentures. I don't say this can be done positively, but I believe it, and while it leaves us short on land it leaves — in possession of the business and gives us the opportunity to raise the money for the purchase, not only of this additional 25,000 acres, but of all the land required for the use of the company; and while I am on this point let me say no one is or will be so foolish as to buy the lands in this range when all the water is owned by others; therefore I am willing to take my chances to buy these lands as cheap as Mr. Munson can and just as satisfactory, & finally secure them for the company without having to pay an exorbitant price. Now, it does seem to me that such a sum could be raised for such a vast property much easier than 296,000 pounds could be for the Cresswell property, notwithstanding he agrees to take $625,000 himself.

On the other hand, let me say that Mr. Munson's price is $730,000.00, and if we have to pay in anything else than the cash he will not budge a cent. The fact is he is pushed for money,

and that is the reason he is offering his property so cheap.
37 Another is he is not a cattle man and wants to get out of the business and out of debt. The condition of our finances this year has been exceedingly annoying to parties owing large am'ts, and no doubt large debts have been hard to arrange, and I venture to say, after having passed through the bitter experiences of this summer, Mr. Munson would be very loth to part with a man who had the cash without making a sale of his ranch. Moreover, I defy any one to point me out such a property for such a price. Such a bargain has not been offered for many a day.

My idea is, when you can see your way clear to raise the am't indicated herein, *is* to give us instructions to buy at the best figures we can and place us in possession of the money to enable us to dictate our own figures and terms, and for the remainder required we would have to take the chances that we could raise it in time.

Mr. Clay estimates the value of Cresswell's property as follows:

35,000 head of cattle @ 27.50	£198,028
150,000 acres land @ 2.50	77,165
Horses, mules, fences, &c.	4,115
Texas steers	22,020
Am't'g to	£301,328

Or a fraction over $1,500,000.00, or nearly three times as much as Munson's price, who has more than half as many cattle, half as many acres of land in fee, and twice as much range (referring to the portions Munson can extend his range), and equally as many horses and equipments and more miles of fence and for one-third the price. I will assert without fear of contradiction that if you can buy Munson's ranch, as I have indicated you could, that within one year it can be so managed as to have just as much freehold land and equally as many cattle, horses, bulls, & other equipments
38 and for two-thirds the capital stock of the Cresswell Ranch & Cattle Co., or about one million dollars.

Moreover, I would like to say that in making my subscription of $80,000.00 I would do so upon the understanding the property should be bought for the lowest cent, as I would have to pay mine in cash. I would wish to buy the property on the same basis.

I shall regret very much if you lose the opportunity of this ranch.

I am reliably informed that Mr. Munson has been within a few points of closing the sale with American parties several times, and I have been fearful he would do so, but did not mention it to you for good reasons; besides, it is almost impossible to raise large am'ts for anything in the U. S. Had I not known this perhaps I should have written before.

I will do anything I can to keep this deal along, knowing it is certain of success as a venture and will lead to other matters greatly to our interest.

I am, yours truly, W. N. EWING.

P. S.—Probably ere this you have seen Col. Stewart, who can more fully explain.

The plaintiffs' undertaking in regard to the capital to be subscribed for by them was, we believe, entered into by them, as they considered the purchase to be an advantageous one, and that the investment was likely to be profitable.

3. At the time when the shares were offered for subscription in London the money market was exceedingly dull, and it was found that if sufficient capital was to be subscribed to purchase the property it must be done by private subscription. The directors were, therefore, under the necessity of requiring the defendants to fulfill their undertaking to subscribe for the shares, which under-
39 taking they appeared to be perfectly ready to perform.

4. The plaintiff, J. M. Coburn, came to London in the month of January, 1885, but the question of the amount of capital to be subscribed for by him and Mr. Ewing was postponed until Mr. Ewing's arrival, in the following month. Mr. Ewing came to London in the end of February, 1885, and, after some verbal and friendly discussion with him and ourselves as to the amount of the shares for which he and his partner should subscribe, I, the said Charles Stewart, addressed to him the letter dated the 28th February, of which the following is a copy:

57 COLEMAN STREET, LONDON, E. C., 28 *Febr'y* 1885.

W. N. Ewing, Esq., Cedar Valley Co.

MY DEAR SIR: I believe that the directors intend to propose that you should subscribe for 2,400 shares, and that this subscription and the payment of the £5 per share thereon (£12,000—$60,000) shall be taken as fulfillment of your agreement to put $80,000 into the company. I believe that one of your letters speaks of putting "$80,000 in cash" into the company, and therefore, tho' it is true that there will be a further uncalled liability of £12,000 ($60,000) on the 2,400 shares, I hope you will consider the arrangement a fair and reasonable one. Please understand that I am not authorized to propose it to you, but I understand that it is what the directors intend to propose, and I mention it to you privately beforehand that you may have time to consider it.

Yours faithfully, CHARLES STEWART.

Mr. Ewing then addressed to the said Duncan Stewart the letter dated 3rd March, 1885, of which the following is a copy:

40 LONDON, *March* 3, 1885.

DEAR SIR: Referring to our conversation yesterday in regard to my subscription to the capital stock of the Cedar Valley Co. and the remuneration to be paid to me as manager of the company in America, I beg to say that I have given these matters fullest and most serious consideration, and, looking to my own position, I regret that I can come to no other conclusion than the following: I will subscribe for 2,000 shares, but can do so only upon the con-

dition that I am to be appointed manager of the company for a period of 5 years.

Appreciating your views as to the necessity of an economical administration for the first year, I am willing to leave to your honorable board to suggest a salary which in their judgment they can afford to pay in view of the earnings that may be reasonably expected and the work to be done. The remaining four years I shall expect $5,000.00 per year, in addition to which, of course, all travelling, office, and such like expenses to be paid by the company.

I am extremely sorry that the misconstruction of my letters should have led to what is to me such an unpleasant incident. I had not the slightest idea of incurring, under any circumstances, a liability beyond $80,000, and, as the above offer will involve a subscription of $20,000 in excess of my original purpose, I hope you will concur with me that this is as much as I can be fairly expected to do under the circumstances.

I am, dear sir, most sincerely yours, W. N. EWING.

To Lt. Col. D. Stewart, Cedar Valley Land & Cattle Co. (Lim.), London.

41 5. At the board meeting which was held on the following day it was distinctly explained to Mr. Ewing that his own and Mr. Coburn's subscription for shares could not be accepted conditionally on his being appointed as manager, inasmuch as he had distinctly undertaken in writing to subscribe even for a larger amount than that which was finally accepted. Mr. Ewing thereupon, on behalf of himself and Mr. Coburn, made a formal and unconditional application for two thousand shares, and that number of shares *were* accordingly allotted to them. The board were, however, willing to appoint Mr. Ewing as manager for five years on certain terms, and his appointment and the conditions referred to were set forth in the agreement which was entered into and concluded with him, and a copy of which is set forth in the plaintiffs' petition.

5. We deny, therefore, that Mr. Ewing's subscription for shares was in any way conditional on his being appointed manager for five years, and we further say that, if it was dependent on that condition, that condition was duly fulfilled, Mr. Ewing having been in fact appointed manager for that period on the condition stated in the memorandum of agreement dated the 4th March, 1885. We say, however, that that agreement does not and could not imply that Mr. Ewing is entitled to hold his office as manager for five years, whatever may be his conduct during that period.

6. In the month of August, 1885, when Mr. George Dixon Fisher, one of the directors of the company, was in America, he discovered that Mr. Ewing, in conjunction with Mr. Coburn, had perpetrated certain frauds, in consequence of which the directors dismissed him from the office of manager. The said frauds consisted in the appropriation of large sums received by them as commission on the purchase of the company's property without the consent or knowledge

of their employers and to the serious detriment of the com-
42 pany's interest.

An action is now pending for the recovery of the sums so received by the plaintiffs.

DUNCAN STEWART.
CHARLES STEWART.
THOMAS E. WEBB.
THOS. A. F. KINGSCOTE.
JAMES GRAHAM.

Sworn at the consulate general of the United States of America, at London, by Duncan Stewart, Charles Stewart, and Thomas Edwin Webb before me this 6th day of November, 1885.

F. C. PEMFIELD. [SEAL.]
Vice and Deputy Consul General.

Sworn at the consulate general of the United States of America, at London, by Thomas Arthur Fitzhardinge Kingscote and James Graham before me this 10th day of November, 1885.

F. C. PENFIELD. [SEAL.]
Vice and Deputy Consul General.

Sworn at the consulate of the United States, in Dublin, Ireland, by George G. Campbell this 13th day of November, 1885.

GEORGE G. CAMPBELL.

B. H. BURROWS, [SEAL.]
U. S. Consul.

43 Afterwards, to wit, on the 9th day of January, A. D. 1886, the following entry appears of record, to wit:

JAMES M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO.

and

CEDAR VALLEY LAND & CATTLE CO.
against
JAMES M. COBURN *et al.*

The following order was this day filed and ordered to be recorded, to wit:

In the Circuit Court of the United States of the Western Division of the Western District of Missouri. October Term, 1885.

SATURDAY, *January* 9, 1886.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, of London,
against
JAMES M. COBURN and W. N. EWING

and

JAMES M. COBURN and W. N. EWING
against
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, London.

44 *Decretal Order.*

This cause, coming on for hearing at this term upon the original bill of Coburn and Ewing and the cross-bill of the Cedar Valley Land and Cattle Company and the respective applications for injunction, was duly argued by counsel and submitted; whereupon the court doth order and adjudge and decree that an injunction issue against the said William N. Ewing and all and every one of the persons mentioned in the cross-bill herein as acting with or for said Ewing and each of them, commanding them and each of them henceforth to desist from acting as the manager or managers of said complainants, situated upon the complainants' ranch, in the counties of Deaf Smith and Randal, in the State of Texas, or elsewhere, and from making any contracts in behalf of said company, and from bringing any suit or suits based upon or for the enforcement of a certain written contract for the employment of the said William N. Ewing as manager of the complainant, which contract is dated the 4th day of March, 1885, and signed by Thomas C. Webb, secretary, and from in any manner incurring liability as manager of said complainant from selling or agreeing to sell any of the cattle or property whatsoever of the said complainant, and from exercising any control whatever over the same or any part thereof. Bond in the sum of $75,000 required. Further orders reserved.

DAVID J. BREWER,
Circuit Judge.

And afterwards, on the 19th day of June, A. D. 1886, the following entry appears of record in this cause:

CEDAR VALLEY LAND & CATTLE CO. *et al.*
against
JAMES M. COBURN *et al.*

45 and

JAMES M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO. *et al.*

This day comes the Cedar Valley Land and Cattle Co., by its so-

licitor, and files petition for a decree, with affidavits in support thereof.

In the Circuit Court of the United States within and for the Western District of Missouri, Western Division.

CEDAR VALLEY LAND & CATTLE CO., Limited, *v.* WILLIAM N. EWING *et al.*	1043.	Bill.
J. M. COBURN *et al.* *v.* CEDAR VALLEY LAND AND CATTLE CO., Limited.	1069.	Bill.
CEDAR VALLEY LAND & CATTLE CO., Limited, *v.* J. M. COBURN *et al.*	1070.	Cross-Bill.
COBURN & EWING *et al.* *v.* CEDAR VALLEY LAND & CATTLE CO., Limited.	1072.	Cross-Bill.

Now comes The Cedar Valley Land and Cattle Company, Limited, a party to the above-mentioned suits, and petitions the court to enter an order or decree in each of said cases showing that the matters in controversy therein have all been settled and compromised by the parties and are decreed and adjudged to be finally
46 settled, and ordering that all the said cases be dismissed, the plaintiff in each to pay costs therein, and that the sureties on the injunction bond given by this petitioner be discharged.

And in support of this application the petitioner files herewith true copies of the written correspondence between the parties, embodying their agreement of compromise, and on the hearing of this petition will produce the originals thereof; also affidavit of George Dixon Fisher.

THE CEDAR VALLEY LAND & CATTLE CO.,
By GEO. W. McCRARY AND ADAMS & FIELD, *Solicitors.*

Said copies of the written correspondence are as follows:

Received November 12, 1885.

Karnes and Waters will recommend any one of the following compromises:

1. C. & E. to be paid back the money for their stock, say $50,000.

C. & E. to pay back the sum of $40,000.

The company to enter its appearance in a suit to be brought by C. & E. to determine the value of their services and commission in purchase of property, leaving out all transactions between C. & E. and W. B. M.

2. The company to allow C. & E. 25,000 as their commissions for the purchase of the ranch, C. & E. to pay balance of $40,000, com-

pany to pay back amount of stock, each party to pay costs made by themselves.

3. Arbitrate by three persons, one selected by each, they to choose a third, what their services shall be, and the com-
47 pany then to pay the amount set, C. & E. to pay $40,000 & company to pay amount of stock.

Either proposition to be finality as to all the matters embraced in the bill filed by the company *vs.* C. & E.

Response to the Proposition of Waters and Karnes, Attorneys for Coburn & Ewing.

Adams and Field and Geo. W. McCrary will recommend to their client, the Cedar Valley Land & Cattle Company, a settlement with Coburn and Ewing as follows:

1. C. & E. to be allowed for their stock what they have paid on it.
2. C. & E. to pay back to the company the sum of $40,000.
3. Ewing to surrender management.
4. This settlement to be a full and final adjustment of all the controversies between the parties and of all claims of either party against the other.
5. No delay of legal proceedings in consequence of these negotiations, unless by an agreement the controversies are ended.

This proposition involves the surrender of the company's claim for the profit on the sale of the Delaware-street property, to which we think it entitled, and which will, we suppose, amount to about the sum of $15,000, as well as other claims set forth in its bill.

And it involves also the allowance for the stock of C. & E. of about $10,000 more than its present value.

These are therefore the most favorable terms we can recommend, and under no circumstances can we advise the payment of commissions to C. & E. or any waiver of the company's right to defend against any claim that they may make on this account.

48 KANSAS CITY, MO., *Dec.* 28, 1885.

Judge Geo. W. McCrary, att'y-at-law.

MY DEAR SIR: In the matter of controversy between the Cedar Valley Land and Cattle Company and Mess. Coburn & Ewing it must have been observed that I have not seemed quite in accord with those associated with me. I have always felt inclined to some amicable adjustment, and regretted when I was directed to terminate rather summarily the negotiations to that end undertaken a few weeks ago. I have now taken the liberty of addressing you this note entirely upon my own responsibility, and I am induced to do so by a statement made to me by Mr. Gage, a mutual friend of both parties, to the effect that he understood Mr. Fisher that the terms proposed by you in our former negotiation were still open for acceptance. If such be the case I say frankly to you that in my judg-

ment the terms then proposed contain substantially the correct basis of settlement, and I would like again to move in the direction of ending all this interminable litigation. I do not wish to trespass on your valuable time, and hence I have not called to present these views in person, but if this letter receives a favorable response I will see my clients and at some time when agreeable to you will call at your office to canvass the matter more in detail. If it is thought best by you to negotiate further I would be glad that no mention be made of this letter.

With high regard, very truly, J. V. C. KARNES.

49 KANSAS CITY, MO., *December* 28, 1885.

J. V. C. Karnes, Esq., Kansas City.

MY DEAR SIR: Yours of this date received. Mr. Fisher is out of town and will not return until the last of the week. I think, however, he is still disposed to settle, and if you can bring your clients to agree to the terms proposed by us let me know, and as soon as he returns I will see him and advise you.

Yours truly, GEO. W. McCRARY.

P. S.—I will not mention the matter to any one until I hear from you further.

G. W. M.

KANSAS CITY, MO., *Dec.* 28, 1885.

Judge Geo. McCrary, city.

MY DEAR SIR: Upon the receipt of your communication of to-day I at once sought an interview with my clients. Maj. Ewing is out of the city, and I only saw Mr. Coburn, who thinks Maj. Ewing will agree to any arrangement that he may make. He has much to say of the company's injustice to them in seeking to appropriate without compensation the result of their labor and skill in the purchase of this property. He contends that Munson was taken at a time when for several reasons he was very anxious to sell, and that they drove an unusually good bargain with him. Of course, I have sought to impress upon him that the case must be tried squarely upon the law. I have brought myself to believe
50 that there is not much probability of your recovering on account of the house and the bulls, but as to the commission of $10,000 I have said frankly that I believe the chances were against my clients. This amount represents the whole sum your company has lost, while it has received the benefit of valuable services at no expense whatever. Any settlement made must involve an entire withdrawal of the interests of Coburn & Ewing. They insist that their stock is worth a premium, while, on the other hand, Mr. Fisher claims that it has depreciated. I am aware that you have the impression that Burnett was not connected with this sale, but in this it is more than probable that you are in error, and Coburn & Ewing have in their possession the proportional part realized coming to Burnett, amounting to $16,800. All these phases of the case I have

gone over carefully with Mr. Coburn, and he has become willing to settle in a way approximately as follows:

(1.) That the stock of Coburn and Ewing be taken at $50,000.

(2.) That Coburn & Ewing pay back to the company the $40,000 received from Munson.

(3.) That the company, with American securities, indemnify C. & E. against any claim of the representatives of Burnett as to the $16,800.

(4.) That all suits be dismissed, each party paying his own costs, all claims for damages or compensation be waived, and full receipts passed.

(5.) That the salary of Ewing up to the time of his discharge be paid to him, amounting to about one month's pay, and that there be paid a few small items of expenses, amounting in all to a very small sum. As I understand, this is substantially your proposition to us. In a conversation with you I think you stated that you would favor the indemnity for the $16,800. I believe there is a contro-
51 versy between Mr. Ewing and Mr. Fisher as to whether the company owes Ewing a month's balance on salary. This, however, of course, can be settled by the books. If I have not made my proposition clear I will be glad to state it more fully, and upon Mr. Fisher's return I much hope a satisfactory adjustment can be made.

Yours truly, J. V. C. KARNES.

KANSAS CITY, MO., *January* 5, 1886.

Col. J. V. C. Karnes, Kansas City.

MY DEAR SIR: We were advised by the counsel of the Cedar Valley Land and Cattle Company in London that the company has no right either to purchase or provide for the cancellation of the stock now held by Coburn and Ewing. In view of this advice Mr. Fisher does not feel at liberty to conclude the settlement upon the basis of taking back the stock. If we could agree upon any settlement which would leave the stock in the hands of Coburn and Ewing or which would not require the company to take it Mr. Fisher would feel at liberty to act in the matter; but, as I assume that this cannot be accomplished, I have advised Mr. Fisher, who leaves for London in a few days, to lay the whole matter before the board and give us instructions which will, I hope, enable us to agree with you upon some disposition of the stock and upon a final satisfactory adjustment of the matters between the parties.

Yours truly, GEO. W. McCRARY.

52 KANSAS CITY, MO., *January* 8, 1886.

Judge Geo. W. McCrary, att'y-at-law.

DEAR SIR: Your note of the 5th instant was duly received, stating that no further action could be taken in the matter of settling the dispute between the C. V. L. & C. Co. and Mess. Coburn and Ewing until Mr. Fisher had additional instructions from his company. I have delayed answering until I could confer with Mess. C. & E.,

which I now have done. They greatly regret the delay that will be necessar-y occasioned, as they hoped for a speedy termination of the controversy. I have urged upon them that they allow me to continue my efforts for an adjustment. This they have done, with the understanding that I request you to ask Mr. Fisher to report by cable at the earliest possible moment whether the proposition will be accepted. This is a matter involving so large an amount and requiring the taking of testimony at so many and such remote points that I assume that we are agreed as to the importance of determining this negotiation one way or another as soon as the same can be reasonably done.

Awaiting your further advice, I am, very truly,

J. V. C. KARNES.

KANSAS CITY, MO., *January 11th*, 1886.

J. V. C. Karnes, Esq.

DEAR SIR: I have arranged with Mr. Fisher to cable me instructions from London as to compromise of the controversy between Coburn and Ewing and the C. V. L. & C. Company. I will ad-
53 vise you promptly when instructions are received.

Very truly yours, GEO. W. McCRARY.

KANSAS CITY, MO., *Jan'y* 26, 1886.

Judge Geo. McCrary, city.

DEAR SIR: Mess. Coburn and Ewing have 2,000 shares in the C. V. L. & C. Co., £5 each, paid, amounting to about $48,800. They will settle the controversy with the company—

1. By returning the $40,000 commission and the company's taking their stock at the actual amount paid by them; or,

2. They will turn over to the company 1,600 shares and retain 400.

3. In any event C. & E. are to be protected against any claim by Burnett's estate, either by a release or indemnity.

4. Mess. C. & E. agree not to buy up or otherwise molest any of the ranch privileges now enjoyed by the company.

5. This settlement in no way to affect the arrangements heretofore made concerning the W. & L. cattle, but the same to be carried out by both parties in good faith as agreed upon, but not to enter into this arrangement in any way whatever. In other words, the W. & L. cattle are in no way taken into consideration in this settlement.

6. The balance of salary as compensation to be paid to Mr. Ewing.

Very truly, KARNES & ESS.

KANSAS CITY, MO., *February* 2, '86.

Col. J. V. C. Karnes, Kansas City.

54 MY DEAR SIR: I enclose herewith a letter just received from Mr. Fisher from New York, which explains itself.

Mr. F. carries with him to London the several propositions of settlement which have been under discussion. Will you kindly advise

me what response Coburn and Ewing have to make to the terms suggested in this letter? If possible I should like to be advised in time to write Mr. Fisher to-morrow, as requested.

Please return Mr. Fisher's letter.

Yours very truly, GEO. W. McCRARY.

NEW YORK, 29*th Jan'y*, 1886.

Geo. W. McCrary.

MY DEAR SIR: As I wired you yesterday, I am unfortunately here till to-morrow, at 2 p. m., in consequence of the steamer I intended sailing with yesterday being disabled. I am sorry at this, as I am anxious to get to London to consult with my codirectors. I have been thinking a good deal over the best way to arrange a compromise with C. & E., but in every shape I take it it is always saddled with the difficulty of dealing with their stock. No one, of course, would be fool enough to take their shares at par when it is so generally known, and by none better than C. & E. themselves, that the value of all cattle shares are not within 20 per cent. of what they were, and as the company itself can neither buy or cancel it is most perplexing. The following is a proposition that has occurred to me that C. & E. might submit to the board: C. & E. agree to pay Co. the $5,000 commission, with interest thereon at the rate of 8 per cent. per annum for the time they
55 have had it; C. & E. to retain their stock in company by the directors getting for them an advance on it for $40,000, at the rate of interest of 10 per cent. per annum, said advance to go to liquidate the debt to the company, C. & E., besides, paying the company's expense in connection with this litigation.

This arrangement would enable C. & E. to hold their stock, which they appear to value so highly, until such time as they could sell it at par, or possibly, in two years, at a premium, and at the same time refund the $40,000. The company would in this case not commence proceedings for damages caused by turning back the cattle. If you think well of this project you can see Karnes about it, and, if C. & E. are disposed to make the above proposition, cable the word "consent" on 8th February, the day I expect to get to London. Frankly, I must say this is a more favorable settlement than I would give them, as I am satisfied there is more in the real estate than $15,000, but under the circumstances might be accepted by the board.

Faithfully, GEO. D. FISHER.

Of course, if there is no cablegram, I will understand they will not make this proposition; in any case, write not later than Wednesday.

KANSAS CITY, MO., *Feb'y* 2, 1886.

Mess. Geo. W. McCrary, city.

DEAR SIR: I am just in receipt of your letter of to-day, including a letter from Mr. Fisher, from N. Y., which I herewith return to you. You have heretofore seen fit to express your appreciation of what I had done and was doing to get this controversy set-
56 tled, and hence I need not restate my endeavors in the matter.

I am only sorry to see Mr. Fisher taking the position indicated by his letter. I am now convinced that Mr. Gage was correct in his opinion that he, F., was unfavorable to any settlement. The terms proposed in his letter I have not submitted nor will I submit to my clients. I have been satisfied from the beginning and am still satisfied, and have so stated to Mess. C. & E., that they were liable in law for the return of the $40,000, but I don't believe they are liable any further. This they ought to repay. On the other hand, this company has received the benefits of their labor without any expense. There ought to be some recognition of the equities of the case. On such a basis I have tried to have an adjustment made; but if it is the determination of Mr. Fisher to drive these men to the wall, then there is no alternative left but to fight. I shall still hope, however, that through the co-operation of yourself and Mr. Gage that a fair and just settlement may be made, and that the damage to the interests of all concerned, to which Mr. Fisher's rashness will lead, may be avoided. As Mr. Fisher mentioned my name in his letter, I would be glad to have him furnished a copy of this.

Very truly, J. V. C. KARNES.

Cablegram.

From London. Kansas City.

Ewing's proposals declined. Letter posted to-day, enclosing complete answer to cross-bill and conveying the only terms which will be accepted. Inform Ewing.

KANSAS CITY, MO., *February* 24, 1886.

Col. J. V. C. Karnes.

57 MY DEAR SIR: I enclose copy of letter, just received from the secretary of the Cedar Valley Land and Cattle Company, submitting the only terms upon which the company will settle with Coburn and Ewing. The sum demanded is nominally larger than that offered by you, but, as it is proposed to receive payment in cattle and the stock of the company now held by C. & E. at par, I am in hopes your clients will consider it better to accept than to continue the litigation.

If this proposition is accepted please advise me before March 4th.

Yours truly, GEO. W. McCRARY.

KANSAS CITY, MO., *Feb.* 27, 1886.

Judge Geo. W. McCrary, city.

DEAR SIR: On February 4th, 1886, you handed to J. V. C. Karnes, Esq., one of our counsel, a copy of a letter which you had just received from the secretary of the Cedar Valley Land & Cattle Company, which is as follows:

THE CEDAR VALLEY LAND & CATTLE COMPANY, LIMITED,
MORGATE STREET CHAMBERS, LONDON, E. C., *Feb.* 11, 1886.

DEAR SIR: The board have had under their very careful consideration Mess. Karnes & Ess' letter, dated the 26th of January

1886, containing two alternative offers by Mess. Coburn & Ewing for the settlement of the claims made by the Cedar Valley Land & Cattle Company upon them.

58 I am instructed to inform you that neither of these propositions is acceptable, and that the action against Mess. Coburn & Ewing must proceed. With that view the answer to Mess. Coburn & Ewing's cross-bill has been forwarded to Mess. Adams & Field along with a letter from the solicitors of the company.

The company being liable in a large sum of costs, which will not be recovered from Mess. Coburn & Ewing, the only terms upon which the board can agree to compromise the claim of the company are as follows:

1. That the amount payable to the company by Mess. Coburn & Ewing be £10,000, the amount paid by them for the 2,000 shares now standing in their names.

2. That this amount, £4,000, shall be paid in cash, or in lieu thereof that the cattle of the L. & W. herd now upon the Cedar Valley ranch shall be accepted as cash, when counted over this spring, upon a valuation to be made by two valuers—one chosen by Coburn and Ewing and one by the company—the valuers appointing a referee.

3. That the balance then remaining due to the company will be discharged by the transfer to such person or persons as may be named by the board of a sufficient number of Mess. Coburn & Ewing's shares on the basis of a par value, the shares then remaining in the hands of Coburn & Ewing to be held by them for a period of not less than two years.

4. Mess. Coburn & Ewing to give security that they will not buy up or otherwise molest any of the range privileges now enjoyed by the company.

5. The company agree to protect Coburn & Ewing against any claim from the executors of the partner of the late Geo. Burnett.

When the board consider (1) that the issue has practically been decided against Mess. Coburn & Ewing by the same judge
59 before whom the case will ultimately be tried; (2) that Mess. Coburn & Ewing have received from Mr. Munson the sum of $75,000 for a property which, in the written estimate of six of the eminent valuers in Kansas City, is worth from $45,000 to $50,000; (3) the almost insuperable difficulty which the board will have in placing any of the shares transferred by Mess. Coburn & Ewing in consequence of the non-payment, a dividend resulting from Mr. Ewing's vindicative or ill-judged action in ordering the beeves back to the ranch, and (4) the interest upon the account of commission obtained in various ways from Mr. Munson from the period of its receipt up to the present date, which, we are advised, would be recoverable from them by an action at law, the board is of the opinion that the foregoing offer is more favorable to Mess. Coburn & Ewing than the latter had any right to expect. The board, however, is induced to offer these easier terms with the object of settling the matter before the general meeting of the 4th of March. It is therefore to be distinctly understood that this proposal only remains

upon until the 3rd of March, and that failing the receipt on or before that date of a telegram announcing that Mess. Coburn & Ewing have signed an agreement embodying the above terms, the offer now made by the board is withdrawn on that day. It will suit the company infinitely better to receive the amount of their claim in cash, as would be the case when a judgment has been recovered in their favor, than to have to deal with any large number of shares transferred by Mess. Coburn & Ewing. It is to be understood that the offer is to be made without prejudice to any claim for damages which the board may have against the executors of the partner of the late George Burnett.

The directors desire me to add that in the event of the foregoing offer being refused they will feel it their duty in the interests of the shareholders to claim full compensation for damages which the company have sustained under various heads, which are
60 clearly attributable to the account of Mess. Coburn & Ewing.

I am, dear sir, yours truly,

JAMES E. WEBB, *Sec'y.*

Geo. W. McCrary, Kansas City, Mo., U. S. A.

And on February 26th, 1886, you sent to Mr. Karnes the original letter you had on that day received from the same party, and which was as follows:

THE CEDAR VALLEY LAND & CATTLE COMPANY, LIMITED, MORGATE STREET CHAMBERS,
LONDON, E. C., 12*th Feb.*, 1886.

DEAR SIR: In reading over the letter which I had the pleasure to address to you yesterday I noticed two points in reference to which I would like to make some observations.

The sum of £10,000 is fixed as the damages to be paid by Mess. Coburn & Ewing, and it is added that this sum was the amount paid by Mess. Coburn & Ewing for their shares. Seeing that there is no connection whatever between the claim for damages and the payment for shares, it is advised that the words "the amount paid by them for the 2,000 shares now standing in their names" be eliminated from the letter, if you think advisable to read it or give a copy of it to Mess. Coburn & Ewing.

The words "vindi*ca*tive or il-judged," on page 3 of the letter, should also be eliminated, as Mr. Ewing, in his letter of 24th October
61 last, stat*ing* that he was acting for the best interests of the stockholders in turning back the beeves. These words are unnecessary, although the directors could not possibly approve a step which precluded the possibility of paying a dividend, the nonpayment of which would have, as had been fully explained to Mr. Ewing, such an injurious effect on an English company. If Mess. Coburn and Ewing should prefer to deliver the cattle of the L. & W. herd, now on the Cedar Valley ranch, the transfer of 12,00– would be accepted by the board at present, leaving the balance of £4,000 to stand over in the meantime.

If the valuation of the L. W. herd shall eventually fall short of

that sum, the balance of such valuation to be made up to the company by the transfer of an equivalent number of shares in the company on the basis of a par value, the board of the above cattle to be paid for at the time of transfer at the agreed-on rate, $1.50 cents per head.

The board is quite ready to agree to Mr. Ewing's stipulation that he shall be paid his salary during such time as he remained in the service of the company, whatever amount may be found to be due to him upon a proper adjustment of accounts.

Will you kindly bear these points in mind in dealing with the other side.

I am, dear sir, yours truly,

JAMES E. WEBB, *Sec'y.*

Geo. W. McCrary, Esq., Kansas City, Mo., U. S. A.

62 Both of these communications, together with your two letters forwarding them to Mr. Karnes, he has placed in our hands. In connection with both our counsel we have fully considered the terms of this proposition. We wish to state emphatically that we regard the proposition as unjust and oppressive, but we have so much involved in this litigation that we agree to and accept the terms of the offer made. The £4,000 will be arranged for with the L. W. cattle, as suggested in the letter of February 12th, and the 1,200 shares of stock therein mentioned we herewith hand you, to be transferred to such parties as may be named. We have only two certificates of two thousand shares each, and we deliver both to you, and the company can return us a certificate for 800 shares. The bond called for by the fourth section of the proposition in the letter of February 11th we will give at any time. It will now soon be the season when the L. W. cattle can be counted, and we will be ready at once to name valuers. Now that a settlement has been effected, we hope there will be no delay in carrying it out in all respects as agreed upon.

We desire to express to you our thanks for the uniform courtesy with which you have treated us throughout this unpleasant matter.

We are, dear sir, very truly,

W. H EWING.
JAMES M. COBURN.
COBURN & EWING.

KANSAS CITY, *February* 27, 1886.

Mess. Coburn & Ewing, Kansas City.

63 GENTLEMEN: Mr. Karnes has handed me your letter accepting the terms of compromise proposed by the Cedar Valley Land & Cattle Company, and has also placed in my hands the certificates for the two thousand shares of stock held by you in the company. I will wire Mr. Webb, secretary of the company, that you have accepted in writing the company's proposition, and have written him requesting that the company take immediate steps to choose a valuer and proceed with as little delay as possible to close up the

matter of the compromise. Of course, it is understood that the settlement embraces all the matters involved in the pending litigation in the several suits between the parties.

The matter of costs and the balance due you on salary can easily be adjusted hereafter. Col. Karnes and I agree that each party pays its own costs.

Yours truly, GEO. W. McCRARY.

KANSAS CITY, MO., *March* 18, 1886.

Messrs. Karnes & Ess, Kansas City, Mo.

GENTLEMEN: I am just in receipt of a letter from James E. Webb, secretary of the Cedar Valley Land & Cattle Company, Limited, of date March 6th, of which I inclose you a copy. Mr. Webb sends me with this letter an assignment, to be executed by Messrs. Coburn & Ewing, transferring to him 1,200 shares of their stock in said company. When Mr. Webb wrote this letter he had not received my communication, written on the 27th of February, informing him that Messrs. Coburn & Ewing had placed in my hands their certificates for the whole 2,000 shares, and had requested that the company would issue to them a new certificate for 800 shares. That letter would reach London about the 7th instant, and an answer may be expected very soon. Probably it would be better to take no further action until it is received.

61 Yours very truly, GEO. W. McCRARY.

The Cedar Valley Land & Cattle Company, Limited, Morgate St. Chambers (30*a* Morgate street).

LONDON, E. C., 6 *March*, 1886.

DEAR SIR: I have to acknowledge the receipt, on the 27th February, of your cablegram of that date, reading:

"Terms proposed accepted by Coburn & Ewing to-day in writing."

That telegram was laid before the board at their meeting on the 5rd inst., and I am directed to inform you that they are glad that a settlement has been arrived at upon terms which they believe will be found upon consideration to be satisfactory to all parties. The board is prepared to find that all the obligations entered into by Mess. Coburn & Ewing will be faithfully and honorably carried out by these gentlemen, and they trust that amicable relations will be resumed and will continue uninterruptedly for the future.

With the view to the carrying out of the provisions of the agreement with Mess. Coburn & Ewing, I now enclose a transfer of 1,200 shares, to be executed in my favor, and the company undertake that if the value of the L. W. herd shall exceed the sum of £4,000 the difference shall be adjusted by the retransfer to Mess. Coburn and Ewing of shares to an equivalent value.

Awaiting confirmation by letter of your cablegram of the 27th,

Yours truly, THOMAS E. WEBB, *Sec'y.*

Geo. W. McCrary, Esq., K. C., Mo., U. S. A.

65 KANSAS CITY, MO., *March* 27, 1886.

J. V. C. Karnes, Esq., Kansas City.

DEAR SIR: I am now advised that the Cedar Valley Land & Cattle Company cannot issue the new certificates for eight hundred shares of stock to Coburn and Ewing, as per terms of compromise, until the latter have assigned the twelve hundred shares. They therefore wish Mess. C. & E. to execute the inclosed assignment, to be sent by me to London. This done, they will immediately execute and send over the new certificates for eight hundred shares.

Please have the assignment executed and return to me at the earliest time practicable, as I wish to forward it without delay.

Yours truly, GEO. W. McCRARY.

(Inclosure.)

The affidavit of George Dixon Fisher is in words and figures as follows:

UNITED STATES OF AMERICA, }
Western District of Missouri, Western Division, } *ss:*

GEORGE DIXON FISHER, being duly sworn, on oath deposes and says that he is agent and attorney-in-fact of the Cedar Valley Land and Cattle Company, Limited, and as such has for some time been engaged in negotiations for the settlement and compromise of the pending litigation between that company and Messrs. Coburn & Ewing in the circuit court of the United States, in the above-mentioned district, and that on or about the 29th day of April,
66 1886, this affiant called upon J. M. Coburn, a member of the firm of Coburn and Ewing, and submitted to him the form of a bond to be given by said Coburn & Ewing in pursuance of the terms of compromise, to bind said firm not to buy up or otherwise molest any of the range privileges of said company. The form of bond had been drawn by George W. McCrary and printed with a typewriter, but as drawn was not satisfactory, and a change therein had been made in pencil by said McCrary by striking out the words "as part and parcel of the," in the second line, and inserting in place thereof "in accordance with the terms of our letter of date February 27th, 1886, accepting terms of compromise." In this form the paper was handed to Mr. Coburn, who added the following words, which now appear upon the paper in his own handwriting: "Of all pending litigation." The first sentence of said bond was therefore amended by Mr. Coburn so as to read as follows: "That for a good and valuable consideration and in accordance with the terms of our letter of date February 27th, 1886, accepting terms of compromise of all pending litigation between us and the Cedar Valley Land and Cattle Company, Limited," &c. The original paper submitted to Mr. Coburn, with the amendment thereto in his own handwriting, is herewith filed, marked "Exhibit A," and made part of this affidavit.

Affiant further states that he is a member of the board of directors of the Cedar Valley Land and Cattle Company, and was present in said board when the proposition of compromise which has since been accepted by Coburn and Ewing was discussed and agreed upon, and the secretary ordered to put the same in form; and affiant further declares that it was understood and intended by said board and by all the members thereof that the same should be a full and final settlement of all pending litigation between the parties.

67 Further affiant saith not.

GEORGE DIXON FISHER.

Subscribed and sworn to before me by George Dixon Fisher this 19th day of June, 1886. My commission expires April 24th, 1890.

[SEAL.] FRED. P. BARNETT,
Notary Public, Jackson Co., Mo.

68 "EXHIBIT A."

Know all men by these presents that for a good and valuable consideration and *as part and parcel of the** [in accordance with the terms of our letter of date Feb'y 27th, 1886, accepting terms of compromise (of all pending litigation)] compromise between us and the Cedar Valley Land and Cattle Company, Limited, we, the undersigned, James M. Coburn and William N. Ewing, partners composing the firm of Coburn & Ewing, do hereby agree and bind ourselves not to buy up or otherwise molest any of the range privileges now enjoyed by the said Cedar Valley Land and Cattle Company, Limited, in the counties of Randall and Deaf Smith, in the State of Texas.

In witness whereof we hereunto set our names this 26th day of April, 1886.

_____.
_____.
_____.

(CLERK'S MEMO.—The portion of the above-copied paper-writing included in brackets is interlined in pencil in the original on file in my office, and that portion of the copy through which a line is passed is similarly lined in the original.)

69 The affidavit of J. V. C. Karnes, filed on the 22nd day of June, A. D. 1886, is in words and figures as follows; to wit:

*A line is drawn through the words printed in *italics*.

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

COBURN *et al.* *vs.* CEDAR VALLEY LAND AND CATTLE COMPANY, Limited.	Bill and Cross-Bill.
CEDAR VALLEY LAND & CATTLE COMPANY, Limited, *vs.* COBURN *et al.*	Bill and Cross-Bill.

J. V. C. KARNES, being duly sworn, upon his oath says that he was one of the solicitors for Coburn & Ewing in the above causes, and that the Cedar Valley Land & Cattle Company was represented by Hon. George W. McCrary and Mess. Adams and Field; and he says that after the correspondence of February 27th, 1886, R. H. Field brought to his office a statement, prepared by Judge McCrary, to the effect that the settlement as agreed on of that date was to be in full of all claims or demand between the respective parties in such litigation. Affiant says that he has not a copy of the paper produced by Mr. Field, but states the contents of it from recollection. He says that he then distinctly told Mr. Field that such paper would not be signed, but that his clients, Mess. Coburn & Ewing, had settled their matters with the Cedar Valley Land & Cattle Company on the propositions of February 11th and 12th, 1886, and the unconditional acceptance of these propositions that day given by said Coburn & Ewing, and that under no circumstances would this settlement be supplemented by any
70 further agreement. Affiant says that he was present with Mess. Coburn & Ewing and Jos. G. Waters, Esq., one of their solicitors, when these letters of February 11th and 12th were considered, and it was then understood and agreed that the propositions hitherto made had been rejected, and that the company offered these terms in these letters of February 11th and 12th as the ultimatum, and while it was desired in many respects to modify these harsh terms, it was agreed that to avoid any misunderstanding that the two letters be copied into a letter of acceptance, and that the terms be unconditionally accepted, and this was done; and affiant says that it was then distinctly stated by both Coburn and Ewing that these terms would be accepted only just in the way they were proposed and to cover nothing more; and affiant says that he and his associate counsel, Jos. G. Waters, prepared the letter of acceptance with that understanding. Affiant further says that in every letter and paper that has since been prepared that, so far as his knowledge extends, it has uniformly been with the understanding that the settlement of February 27th spoke for itself in the unconditional acceptance of the letters of February 11th and 12th, and that nothing was to be added thereto or subtracted therefrom.

J. V. C. KARNES.

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 22nd day of June, 1886. My commission expires on the 22nd day of August, 1888.

[SEAL.] HENRY M. STONESTREET,
Notary Public, Jackson Co., Mo.

71 And afterwards, on the 19th day of July, A. D. 1886, the following entry appears of record, to wit:

J. M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO.

This day a decree is ordered for defendants herein.

Said order for a decree is in the words and figures following, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

COBURN *et al.* *vs.* THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited.	Bill and Cross-Bill.
CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, *vs.* COBURN *et al.*	Bill and Cross-Bill.

There have been two actions pending between these parties, in each of which both bill and cross-bill were filed. While thus pending, negotiations for settlement were entered into, which have resulted in a settlement, and the question now presented is the extent of that settlement.

After several propositions had been made by both parties, on the 27th of February the cattle company sent to Coburn and Ewing a letter, in which all propositions of theirs were declined and in which it was stated that "the only terms upon which the board can
72 agree to compromise the claim of the company are as follows."

This proposition was unconditionally accepted and its terms have been complied with by Coburn and Ewing. Now they insist that all that was settled was the claim of the company as presented in its pleadings, while their claims remain open and undisposed of. The company, on the other hand, insists that all the matters in controversy, including all the claims of both parties presented in these two actions, were included in the settlement and are disposed of by the same.

I think that the company is right, and for these reasons:

First. Wherever parties are in litigation, having antagonistic claims, and a settlement is proposed and accepted it will be presumed that all matters in controversy in that litigation are included within the settlement unless the contrary clearly appears.

Second. It is perfectly obvious that the cattle company intended by its proposition to cover all the claims in controversy. It is true in the letter it says "the claim of the company," and in a narrow and technical sense that undoubtedly means simply its cause of action and would not embrace any distinct cause of action in behalf of the adverse party; but it is not a strained or unnatural use of language to construe it as applicable to the amount which the company claimed as the balance due after the adjustment and settlement of the respective claims of both parties. That such was the intent of the company is obvious from a preceding paragraph of that letter, in which the company uses this language: "The board have had under their very careful consideration Mess. Karnes & Ess' letter, dated the 26th of January, 1886, containing two alternative offers by Mess. Coburn & Ewing for the settlement of the claims made by the Cedar Valley Land and Cattle Company upon them."

73 In this is seen it speaks of offers made for settlement of the claims of the company—claims made by the company upon Coburn and Ewing. Turning to the letter referred to, we find that it was in terms a proposition for settlement of the entire controversy and including the claims of both parties. Thus, in its letter proposing this settlement, the company placed an unmistakable interpretation upon the expression "claim of the company."

Further, immediately upon the receipt of the letter accepting this proposition counsel for the company wrote a letter, which was received by Coburn and Ewing, in which he stated: "Of course, it is understood that the settlement embraces all the matters involved in the pending litigation in the several suits between the parties;" so not only is the intent of the company clear, but it is also clear that Coburn and Ewing had full notice of that intent. Now, a contract—and this settlement is nothing but a contract—implies the agreement of two minds as to certain matters. What the company intended is clear, and that Coburn and Ewing had knowledge of that intent is equally clear. Of course, if they proceeded with the settlement with notice of what the company meant by the terms used they accepted the contract upon that basis.

Further, on the 29th of April, after the acceptance of this proposition of settlement, a bond was presented to Mr. Coburn which contained this language: "In accordance with our letter of date February 27th, 1886, accepting terms of compromise between us." Not satisfied with this language, Mr. Coburn in his own handwriting interlined these words after the word compromise, "of all pending litigation," which clearly shows that he understood that the settlement covered all the claims in controversy.

Finally and chiefly, these actions were pending in a court of equity, and such a court will see that good faith and fair

74 dealing are observed by both parties. After this proposition had been made and accepted and before anything had been done except handing to counsel some certificates of stock Coburn and Ewing were clearly notified of what the company intended by this proposition. Much remained to be done. Cattle were to be

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 22nd day of June, 1886. My commission expires on the 22nd day of August, 1888.

[SEAL.] HENRY M. STONESTREET,
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J. M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO.

This day a decree is ordered for defendants herein.

Said order for a decree is in the words and figures following, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

COBURN *et al.* *vs.* THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited.	Bill and Cross-Bill.
CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, *vs.* COBURN *et al.*	Bill and Cross-Bill.

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72 agree to compromise the claim of the company are as follows."

This proposition was unconditionally accepted and its terms have been complied with by Coburn and Ewing. Now they insist that all that was settled was the claim of the company as presented in its pleadings, while their claims remain open and undisposed of. The company, on the other hand, insists that all the matters in controversy, including all the claims of both parties presented in these two actions, were included in the settlement and are disposed of by the same.

I think that the company is right, and for these reasons:

First. Wherever parties are in litigation, having antagonistic claims, and a settlement is proposed and accepted it will be presumed that all matters in controversy in that litigation are included within the settlement unless the contrary clearly appears.

Second. It is perfectly obvious that the cattle company intended by its proposition to cover all the claims in controversy. It is true in the letter it says "the claim of the company," and in a narrow and technical sense that undoubtedly means simply its cause of action and would not embrace any distinct cause of action in behalf of the adverse party; but it is not a strained or unnatural use of language to construe it as applicable to the amount which the company claimed as the balance due after the adjustment and settlement of the respective claims of both parties. That such was the intent of the company is obvious from a preceding paragraph of that letter, in which the company uses this language: "The board have had under their very careful consideration Mess. Karnes & Ess' letter, dated the 26th of January, 1886, containing two alternative offers by Mess. Coburn & Ewing for the settlement of the claims made by the Cedar Valley Land and Cattle Company upon them."

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Further, on the 29th of April, after the acceptance of this proposition of settlement, a bond was presented to Mr. Coburn which contained this language: "In accordance with our letter of date February 27th, 1886, accepting terms of compromise between us." Not satisfied with this language, Mr. Coburn in his own handwriting interlined these words after the word compromise, "of all pending litigation," which clearly shows that he understood that the settlement covered all the claims in controversy.

Finally and chiefly, these actions were pending in a court of equity, and such a court will see that good faith and fair

74 dealing are observed by both parties. After this proposition had been made and accepted and before anything had been done except handing to counsel some certificates of stock Coburn and Ewing were clearly notified of what the company intended by this proposition. Much remained to be done. Cattle were to be

valued, counted, and delivered. It was an easy thing to hand back the certificates of stock. If they were unwilling to accept the settlement when informed what the company understood and intended by the proposition, it was their duty to say we have misunderstood the scope of your proposition. If you mean all that you now say, we did not accept it. We have never come to any agreement. Instead of that, after full notice, they go on and comply with all the terms of the proposition. It is too late for them now to say we did not suppose that the proposition meant all that the company now claims; we thought it meant only a settlement of half the case, and insist upon the right to prosecute the other half.

I think the parties are entitled to a decree reciting that upon the evidence presented the court finds that there has been a full settlement of all the matters in controversy, and ordering that the several bills and cross-bills be dismissed, each party paying his own costs.

And afterwards, at the said May term, 1886, to wit, on the 2d day of August, A. D. 1886, the following entry appears of record, to wit:

J. M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO. *et al.*

The following decree, filed July 24th last, was this day ordered to be recorded:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

75 J. M. COBURN and W. N. EWING
v. 1069.
THE CEDAR VALLEY LAND & CATTLE COMPANY, Limited, and GEORGE DIXON FISHER. Original Bill.

This case came on to be heard upon the petition of the said respondent, The Cedar Valley Land & Cattle Company, Limited, for final decree settling and adjudicating all the issues herein, George W. McCrary and Adams & Field appearing for respondents, and J. V. C. Karnes and Joseph G. Waters appearing for complainants; and the court, having heard the evidence and the argument of counsel, sustains said petition, and it is therefore ordered, adjudged, and decreed that there has been, by the agreement of the parties, a full compromise and settlement of all the matters in controversy in this case; and it is ordered, in pursuance of the agreement of the parties, that the bill be dismissed at the cost of the complainants, to be taxed.

DAVID J. BREWER,
Circuit Judge.

And now come complainants, by their solicitors, and file application for a rehearing; also a stipulation of parties as to the time of hearing the same.

Said application for a rehearing is in words and figures as follows, to wit:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES M. COBURN *et al.*, Pl'ffs,
vs.
THE CEDAR VALLEY LAND & CATTLE CO., Limited, *et al.*, Def'ts.

James M. Coburn and William N. Ewing ask the court to
76 set aside and vacate the decree entered in the above-entitled cause and grant them a rehearing for the following reasons:

1. The evidence on which this decree was based consists entirely of correspondence between counsel and affidavits, and it nowhere appears that any form of entry was ever agreed upon or ever spoken of, other than that the bills and cross-bills should be dismissed, each party paying his own costs. The settlement made was wholly outside of the court and was not pleaded, and the court has no jurisdiction to supplement the agreement of the parties by decreeing a final settlement.

2. The court overlooked the testimony showing that the counsel for the Cedar Valley Land & Cattle Company, before writing the letter to Coburn & Ewing, in which he stated "of course it is understood that the settlement embraces all the matters involved in the pending litigation in the several suits between the parties," had written a letter embodying the same idea, and submitted the same to the counsel for Coburn and Ewing, who had peremptorily refused to sign it, and the counsel for the company, knowing this refusal, did not offer to return the stock and terminate the arrangement, but held the stock, and in a letter to Coburn and Ewing assumed a state of facts to exist which he ought to have known did not exist. In overlooking this previous correspondence the court committed an error.

3. The court further erred in reaching the conclusion that the details of the settlement were carried out by Coburn & Ewing without disclosing their understanding that this was not intended as a full settlement. The evidence will show that at every step the counsel for the company had full knowledge that this claim would be made,
and every word was excluded from the receipts and other
77 papers passed between the parties which could in any way be construed into a final settlement of all matters in dispute. These receipts and other papers were not in evidence, but as it has been assumed that the company completed the arrangement on the belief that it was in full, we would ask to furnish copies of such papers and full affidavits covering these points.

4. The court erred in concluding there was a lack of "good faith and fair dealing" on the part of Coburn and Ewing in making said settlement. A proposition was made by the company and accepted by Coburn and Ewing. In less than an hour afterward a paper was prepared by counsel for the company engrafting upon

the settlement as made additional terms, reciting that this was in full of all matters in dispute. This was promptly declined by counsel for Coburn and Ewing. The stock could have been returned, but it was retained, and an effort made again to have Coburn & Ewing committed to a full settlement by the letter which was written. In the progress of the settlement the forms for receipts were carefully prepared, so as to exclude the idea that it was a full settlement. The full evidence will disclose the fact that this company has carefully sought from the beginning to recover the last cent possible from Coburn & Ewing, and at the same time has been unwilling to have the claim made by Coburn & Ewing judicially determined. To refute this imputation of unfair dealing your petitioners would ask that they be permitted to offer in evidence the papers as originally prepared for carrying out the details of the settlement and the changes in them insisted upon by Coburn and Ewing and allowed by said company, showing that at all times from the acceptance of the proposition the company had full knowledge of the understanding of Coburn and Ewing and what they would insist upon, and that "good faith and fair dealing" would have required the company to have then repudiated the arrangement, instead of taking to itself all the benefits arising therefrom.

78 5. Full and complete evidence will show that the interlineation made by J. M. Coburn in bond has been wholly misunderstood. This bond was never used, and this change was made at a time when it was sought to agree upon these forms for carrying out the details, and in using this expression, "pending litigation," reference was had solely to the claim made by the company, and when subsequently understood that it might be construed to cover both bills and cross-bills this expression was not used and nowhere appears in the papers so used in settlement; all of which can be shown by a full statement of all the evidence bearing upon this point.

6. The evidence discloses that this company has had the services of Coburn & Ewing without any compensation whatever. This is no new claim made by Coburn & Ewing, but has been insisted upon at every step. The court has only been put in possession of a portion of the facts. The opinion filed shows the mistakes into which the court has been led. We ask that the case be reheard, and (1) that this application for a decree be denied, and that the parties be left to the agreement which they have made, and that the bills be dismissed.

(2.) Or that the entire evidence bearing on this settlement be heard.

J. G. WATERS,
KARNES & KRAUTHOFF,
For Coburn & Ewing.

Said stipulation is in words and figures as follows, to wit:

In cases numbers 1043, 1069, 1070, & 1072 by agreement the motions for rehearing to be taken up and disposed of next rule day.

KARNES & WATERS,
For C. & E.
R. H. FIELD, *For Cattle Co.*

79 And on the 11th day of September the following notice was filed, to wit:

To George W. McCrary:

You are hereby notified that on the 17th day of September, 1886, in the city of Leavenworth, Kansas, before Judge Brewer, we will call up the petition to set aside the decrees in the several cases pending between Coburn & Ewing and the Cedar Valley Land and Cattle Company, Limited, in the circuit court of the United States for the western division of the western district of Missouri.

J. G. WATERS, AND
KARNES & KRAUTHOFF,
Attorneys for Coburn & Ewing.

Kansas City, Mo., Sept. 11, '86.

I hereby accept service of above notice.

GEO. W. McCRARY,
For Cedar Valley Land & Cattle Co., Limited.

And at the October term, 1886, of said court, and on the 8th day of November, A. D. 1886, the following opinion was filed:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited,
vs.
JAMES M. COBURN *et al.*

Opinion.

BREWER, *C. J.:*

Coburn and Ewing petition for a rehearing.

80 They object that the decree as entered shows a final settlement of all matters in controversy and dismisses the bills and cross-bills, when in fact there was no final settlement and when under the pleadings no such question was in issue or could be determined.

The facts are these: After bills and cross-bills had been filed some compromise was effected; of that there is no dispute.

The Cedar Valley Company filed a petition alleging that all claims in dispute had been settled and asking a decree accordingly.

A hearing was had; affidavits and other testimony presented without objection. Both parties appeared and argued the question. No objection was made to the form of the proceeding, the only objections being that in fact the settlement was only partial instead of total, and that the court had no right to enquire into the matter, but could only dismiss the bills and cross-bills. Now, it is insisted that if anything had transpired since the filing of the original bills and cross-bills changing or affecting the issues such new matter should have been presented by supplemental bill. I think counsel are right, and that such is the true practice; but that is a mere mat-

ter of form. All the facts were presented as fully and as clearly as though stated in a supplemental bill. No objection on account of form was suggested. Will a party be permitted to test the judgment of the court on the substance of the controversy and upon defeat, then for the first time raise a mere question of form? Nothing can be plainer. When cases of an equitable nature are removed from a State court seldom is the plaintiff's pleading in the full and precise form of a bill in equity. If parties insist, repleading is ordered. But, if not, and all the facts are stated, will the court, after decree, set it aside simply because the pleading does not con-
81 tain all the formalities of a bill? Such a proceeding would give a bitter irony to the appellation of the court as a court of equity. So here it is not pretended that all the facts were not stated, but only that they were not presented through the formalities of a supplemental bill. Coburn and Ewing were cut off from no right; were not prevented from making a full defense. They had every opportunity they asked.

Again, it is insisted that affidavits were used, and not depositions; that no cross-examination was had, &c. But all this was by consent, or at least without objection. They offered affidavits themselves; had all the time they sought for presenting their testimony. They never asked to take depositions or the privilege of cross-examination or time to produce more testimony, of which they now say they have an abundance. They made no objection as to the manner in which the testimony was presented, and I doubt not that if all the testimony had been by oral examination of witnesses in open court such irregularity, if acquiesced in at the time, would have furnished no ground for setting aside the decree based thereon. He who keeps silent when he should speak must keep silent forever thereafter.

Of the merits of the case I shall add nothing to what I said before when ordering the decree, and of the duty of the court to render such a decree upon the application of either party, when there has been in fact a full compromise and settlement, I have no doubt. The application for a correction of the decree and for rehearing is denied.

DAVID J. BREWER,
Circuit Judge.

On the 22nd day of November, A. D. 1886, the following entry appears of record in this cause, to wit:

82 JAMES M. COBURN *et al.*
against
THE CEDAR VALLEY LAND & CATTLE CO., L'd.

Now, on this day, the application of the complainants for a rehearing herein coming on to be heard, and the same having been argued by counsel and submitted to the court—now, the premises having been duly considered, it is ordered that the same be denied, and that the costs of this application be taxed against the said complainants.

And now again come complainants, by their solicitors, and file petition for an appeal in this cause to the Supreme Court of the United States; and the following order is filed and ordered to be spread upon the records, to wit:

JAMES M. COBURN and WILLIAM N. EWING, Complainants,
vs.
THE CEDAR VALLEY LAND & CATTLE COMPANY, Limited, Respondent. } No. 1069.

Complainants file petition for an appeal of this cause to the Supreme Court of the United States, and it is ordered that such appeal be allowed on complainants filing a bond, with security to be approved by the clerk of this court, in the sum of $500.00.

Nov. 26, 1886.

DAVID J. BREWER,
Circuit Judge.

Said petition for an appeal is in words and figures as follows, to wit:

In the Circuit Court of the United States in and for the
83 Western Division of the Western District of Missouri.
In Equity.

JAMES M. COBURN and WILLIAM N. EWING, Complainants,
vs.
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, Respondents. } No. 1069.

To the Honorable David J. Brewer, judge of the circuit court of the United States in and for the western division of the western district of Missouri:

This day come William N. Ewing and James M. Coburn and pray the court to enter an order of this court allowing an appeal of this cause to the Supreme Court of the United States, and to fix the amount of bond and security to be required, and that such bond and security shall be approved by this court.

JAMES M. COBURN,
WILLIAM N. EWING, *Complainants,*
By KARNES AND KRAUTHOFF,
WATERS AND HENRY N. ESS,
Their Attorneys.

On the 3rd day of December, A. D. 1886, the following order was filed:

J. M. COBURN *et al.*
against
CEDAR VALLEY LAND AND CATTLE CO.

This day come complainants, by their solicitors, and present to

the court their bond for appeal and a citation in the above-entitled cause, and upon due examination said bond is by the court
84 approved and said citation is signed.

A. KREKEL, *Judge.*

Said bond is in words and figures as follows:

UNITED STATES OF AMERICA, *sct:*

JAMES M. COBURN and WILLIAM N. EWING, Complainants, *vs.* THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and George Dixon Fisher, Respondents. } In Equity. Case No. 1069.

Know all men by these presents that we, James M. Coburn and William N. Ewing, as principals, and O. P. Dickinson and L. J. Talbott, as sureties, are held and firmly bound unto the Cedar Valley Land and Cattle Company, Limited, and George Dixon Fisher, his heirs and assigns, and the successors and assigns of said Cedar Valley Land & Cattle Company, Limited, in the sum of five hundred dollars; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of Dec., A. D. 1886.

Upon this express condition, to wit: Whereas the above-named James M. Coburn and William N. Ewing have prosecuted their appeal to the Supreme Court of the United States to reverse a decree rendered in the cause above named by the circuit court of the United States for the western division of the western district of Missouri: Now, if the above-named James M. Coburn and William N. Ewing shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void; otherwise to remain
85 in full force and virtue.

WILLIAM N. EWING. [SEAL.]
JAMES M. COBURN. [SEAL.]
O. P. DICKINSON. [SEAL.]
L. J. TALBOTT. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

A. KREKEL, *Judge.*

UNITED STATES OF AMERICA, *Western Division of the Western District of Missouri,* } *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing is a true and complete transcript of the pleadings, proceedings, and final decree in the cause wherein Coburn and Ewing and W. N. Ewing are complainants and The Cedar Valley

Land and Cattle Company, Limited, and George Dixon Fisher are respondents, as fully as the same remains on file and of record in my office.

Witness my hand as clerk and the seal of said court.

Done at office, in the city of Kansas, this 18th day of February, A. D. 1887.

{ Seal of the United States Circuit Court for the Western District of Missouri, Western Division. }

H. C. GEISBERG, *Clerk*,
By WARREN WATSON, *D. C.*

Endorsed on cover: W. Missouri C. C. U. S. No. 140. James M. Coburn and William N. Ewing, appellants, *vs.* The Cedar Valley Land and Cattle Company, Limited, and George Dixon Fisher. Filed October 4, 1887.